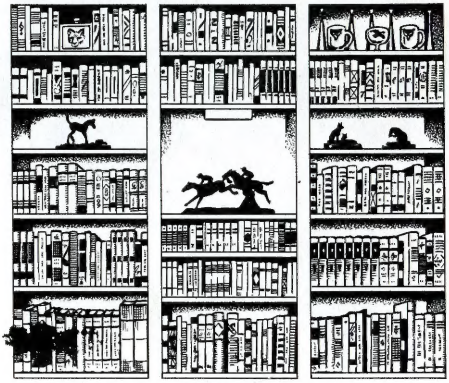

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THE

Laws concerning Game.

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And alſo of

Setting-dogs, Grey-hounds, Lurchers, Nets, Tunnels, Lowbels, Guns, and all Manner of Engines and Inſtruments mentioned in the ſeveral Statutes to deſtroy the *Game*; ſhewing who are qualified by Law to keep and uſe them, and the Puniſhments of thoſe who keep them, not being qualified. Likewiſe the proper Seaſons allowed by Act of Parliament for Hunting, Fiſhing and Fowling.

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THE

PREFACE.

AS *Ignorance of the Law excuſeth no Man,* * *therefore it is abſolutely neceſſary for every Perſon to be well acquainted with the* Laws of *ENGLAND* concerning the Game; *for there are ſcarce any Laws of this Kingdom that require to be more univerſally known; all Ranks from the Peer to the Peaſant, not being exempted from Puniſhment for the Breach of them; on which Account the Reviſor of this Edition has endeavoured to ſhew, what is accounted* Game *in the Eye of the*

* Ignorantia juris non excuſat.

Law, their Proceeds and Seasons of Hunting, &c. *what are the proper Receptacles for the* Game; *what Officers peculiarly belong to such Receptacles; the Manner of Chooſing or Appointing them, their Oaths and Duties in their reſpective Poſts, and how far their Power and Authority extends; who ſhall be accounted Offenders, to whom it belongs to puniſh ſuch Offenders, and how and in what Manner to proceed againſt and puniſh them, either in the Foreſt-Courts or otherwiſe.*

In this Edition are contained the Forms of Original Writs, Indictments, Convictions, Declarations, Pleas, Juſtifications, Warrants, Mittimus's, Commiſſions, Deputations, Licences,

ces, and other Precedents and Proceedings, (*relating to the Game in General*) *more than in the former Editions, and the Statutes (which are the Foundation of such Proceedings) are immediately referred to before each Precedent, which must make this Edition still more useful and satisfactory.*

And whereas several Obsolete Words are made use of in the ensuing Treatise, the Revisor has explained them in the following Work, in proper Order that the Reader may the better understand the Forest Laws, and the Nature of their Courts. The Statute Law concerning the Game; *the Cases, Resolutions and Judgments in the Assises,*

Iters, and Courts of Record at Westminster *down to the present Time, are here particularly and carefully added; in short, the present Laws of the Game are freely and clearly Treated of in this little Tract, and the whole System divided into several Titles, in an Alphabetical Order; a most approved Method for the ready finding any Thing in a Book, whereby the Reader may at once satisfy himself in his Inquiry without turning over the voluminous Works in which the Laws of this Nature promiscuously lie dispersed.*

THE

THE

INTRODUCTION.

BEfore I treat of the ſeveral Laws relating to the Game, it may be neceſſary to mention ſomething of the Original and Growth of the grand Receptacles of the Game, which are the *Foreſts* in *Great Britain*.

To begin with the Time of the *Britons*, when their Princes and great Lords had no Occaſion to ſet apart Places for the Preſervation of Game and Beaſts of Venary, (their Bruery, *i. e.* Thickets and uncultivated Lands, being ſuch Nurſeries and Shelter for them), it was the Intereſt of both Princes and Lords, rather to deſtroy than preſerve them.

During the Wars between the *Britons* and *Saxons*, ſo many of the *Britons* were killed, and ſo many fled from the conquering *Saxons*, that the cultivated Lands were more than ſufficient to maintain the Conquerors and the miſerable *Britons* who ſtaid amongſt them; for at that Time there were no foreign Markets where the *Saxons* traded with the Produce of their Lands. When the *Saxons* found themſelves Maſters of the *Britiſh* Lands and People, the *Saxon* Captains, as Conquerors, in Common Council agreed to divide the Lands they had taken amongſt themſelves, their Friends and Companions in Conqueſt. The Woods, Waſtes and Bruery Lands, that were not appropriated to any particular Perſons, remained to the Chief Captain, who in Proceſs of Time aſſumed the Title of King, who, as Occaſion offered, granted Parcels of ſuch Woods to whom he thought fit.

On

On this Succeſs of the *Saxons* in *Britain*, their hungry half-ſtarved Friends and Relations ſwarmed out of the *German* Hive, to ſuck the Sweet of our Iſland; Multitudes coming over Time after Time, more and more uſeleſs Woods were appropriated and improved; and as Improvements were made, the Game and Beaſts of Venary retired from thence for Shelter into the unfrequented Woods; whither the *Saxon* Kings, that took Delight in Hunting, went for their Diverſion, where was ſuch Plenty of Game, that there was no Occaſion for reſtraining Laws to preſerve them. Theſe Royal unimproved Woods are the Foreſts pointed at by Sir *Edward Coke* in his 4 *Inſt.* 319. who ſays, they are ſo ancient as no Record or Hiſtory doth make any Mention of any of their Beginnings.

Whilſt the ravenous Beaſts of Prey were ſo numerous in the Royal Woods, as to prevent the Increaſe of the Beaſts

of delicious Taſte for the Table, the Kings gave free Liberty to the Nobility and Gentry to hunt in their Woods; but in *Edgar*'s Time, the Breed of ravenous Beaſts being much leſſened, he having an elegant Taſte prohibited Hunting his Deer, and appointed Officers to preſerve all Game of the Table, in his Woods, who ſo rigourouſly put in Execution their Orders, that the Nobility and Gentry were prevented of taking their Diverſion, and their Tenants of their reſpective Rights: At Length this arbitrary Procedure of the Officers grew to ſo great a Grievance, that Noblemen, Gentlemen and Farmers, made great Complaints for Want of a Law, to aſcertain the King's Prerogative and the People's Privilege in this Caſe; on which King *Canute*, through his innate Goodneſs and Juſtice, in a Parliament holden at *Wincheſter* in 1016. brought the Proceeding to a Certainty, that all Men might know what they

ſhould,

ſhould, and ſhould not do, by publiſhing Foreſt Laws, therein ſetting out the Bounds of his Foreſts, and limiting the Power of the Foreſt Officers. *Manwood* 401. 8°. ſays, they were firſt penned in the *Daniſh* Language; but Lord *Coke* in his 4 *Inſt.* 320. ſays, *Canute* never publiſhed any Law for *England* in the *Daniſh* Tongue, and by the Tranſlation of them it may be fairly conjectured they were originally penned in *Saxon*, from the *Saxon* Words retained, and not by the Tranſlator turned into *Latin*; which ſhews he was neither Maſter of the *Saxon* Language or Character: For inſtance, he miſtaking Þ for a *Roman* P. makes *Pegan*, (and leaves it untranſlated, which is neither *Saxon* nor *Daniſh*,) inſtead of Þegen a *Thane*, and *Leſpegend* he puts inſtead of *Leſthegan*, again miſtaking the *Saxon* Þ for a *Roman* P, *&c.*

The *Saxon* Kings and the *Daniſh* King *Canute* made no new Foreſts, but

were contented with the Woods that were their own Demeans, and were never granted to, or poſſeſſed by the Subject; but the Kings of the *Norman* Race, not being ſatisfied with ſixty-eight old Demean Woods or Foreſts, depopulated well-built Towns and Villages to make to themſelves Places appropriated to their own Diverſion only.

William the Conqueror laid Waſte thirty-ſix Towns in *Hampſhire* to make a Foreſt, which ſtill retains the Name of the *New Foreſt*; and his Foreſt Officers, Mr. *Gurdon* ſays in his Hiſtory 113. exerciſed ſuch arbitrary Rule, as to abridge even the great Barons of the Privileges they enjoyed under the *Saxon* and *Daniſh* Kings; not at all regarding the Liberties given to the Subject by *Canute*'s Foreſt Laws.

His Son *William Rufus* is recorded in Hiſtory for the Severity of his Proceedings againſt all that hunted in his Foreſts, inflicting the Puniſhment of Death upon

upon such as killed a Stag or Buck in his Forests, without any other Law than that of his own Will.

Henry I. and *Richard* I. were as Arbitrary in this Case, as their Predecessors, [following their Precedents] in punishing Nobility and Gentry who hunted in the Royal Forests, which was with the greatest Severity, *viz.* with the Loss of *Eyes and Testicles*, other Offences fineable at the Will of the King; some were never to be pardoned, and no Person whatsoever was exempted from appearing at the Court of Justice-Seat, upon a Summons of the Chief Justice in *Eyre*; by which the People were grievously oppressed by those personal Services they were bound to perform at those Courts in the Forest.

In the Reign of King *John*, these and other Oppressions, having exasperated the Barons, they took up Arms and chose *Robert Fitz-Walter* their General, and marched to *Northampton*, and

and by the Way of *Bedford* to *London*; from whence they ſent Letters to the Earls, Barons and Knights that adhered to the King, that if they would not deſert the perjured King, and join with them in aſſerting their Liberties, they would proceed againſt them as publick Enemies.

Theſe Threats drew from the King moſt of the Barons that had adhered to him, which Defection left the King hopeleſs, and induced him to ſend *William* Earl of *Pembroke* and other faithful Meſſengers to let the confederated Barons know he would grant them the Laws and Liberties they deſired: Upon which a Meeting of King and Barons was agreed to be on the fifteenth of *June* 1215. at *Running-Mead*, between *Staines* and *Windſor*, where a Conference began between the Barons that adhered to the King and the confederated Barons, who were ſo ſuperior in Number to the King's Barons, that he

ſeemed

ſeemed to make no Difficulty of granting the Laws and Liberties demanded; which were drawn up as the confederated Lords thought fit, in two Charters, *viz.* The Great Charter, and the Charter of the Liberties and Cuſtoms of the Foreſt.

Henry III. in 1225. in the ninth Year of his Reign confirmed the Charter of Liberties and of the Foreſt under his Seal, and ſent one into each County of *England*: And this Charter was witneſſed by thirty-one Biſhops and Abbots, and by thirty-three Lay Barons; in his fourth Parliament alſo Archbiſhop *Boniface* denounced a Curſe in *Weſtminſter-Hall*, in the Preſence of the King and ſeveral Biſhops and Noblemen, againſt thoſe who ſhould break this Charter; and to add to the Solemnity, the Biſhops were apparelled in their *Pontificalibus*, and each held a lighted Taper in his Hand; and the Archbiſhop denounced the Excommunication

nication in the following Words, *viz.*
" By the Authority of God the Father,
" the Son and the Holy Ghoſt, and of
" the Glorious Mother of God and per-
" petual Virgin *Mary*, and of the Bleſ-
" ſed Apoſtles *Peter* and *Paul*, and of
" all the Apoſtles and Martyrs, of
" Bleſſed *Edward* King of *England*,
" and of all the Saints of Heaven, we
" excommunicate, accurſe, and from
" the Benefit of our Holy Mother the
" Church we ſequeſter all thoſe, who
" hereafter ſhall violate, break, dimi-
" niſh or change the free Cuſtoms and
" Liberties granted in the *Charter of the*
" *Foreſt*, by our Lord the King to the
" Prelates, Earls, Barons, Knights, and
" other Freeholders of the Realm, and
" all who ſecretly or openly by Deed,
" Word or Counſel ſhall bring in Cu-
" ſtoms, and keep them when brought
" in againſt the ſaid Liberties, or any of
" them, and all thoſe who ſhall pre-
" ſume to judge againſt them; all and

" every

" every which Perſons, that ſhall wil-
" lingly commit any of the Premiſſes,
" let them know that they incur the
" aforeſaid Sentence *ipſo facto*, and
" thoſe who commit them ignorantly
" ought to be admoniſhed, and except
" they reform themſelves within fifteen
" Days after ſuch Admonition, and
" make full Satisfaction for what they
" have done *at the Will of the Ordi-*
" *nary*, ſhall be from thenceforth wrap-
" ped in the ſaid Sentence, to the per-
" petual Memorial of which Thing
" we the aforeſaid Prelates have put
" our Seals to theſe Preſents." Thus the grievous Oppreſſions, which the Subjects of *England* then laboured under, were remedied by this Charter, which the Reader will ſee under proper Heads in the following Treatiſe.

THE

THE LAWS of ENGLAND Concerning the Game, &c.

Action, of Debt, *&c.* for Pecuniary Penalties inflicted by the Game-Acts, may be brought in any Court of Record, by Stat. 8 *Geo.* 1. See **Game.**

Agist, Is derived from the *French* Word *Giste, i. e.* a Bed or resting Place; whence to *Agist*, signifies to take in and feed the Cattle of Strangers in the King's Forest.

The King's Demesne Woods and Lands must always be *agisted* by his Foresters, Verderers and Agistors. *Manwood* 3, 4.

Every Freeman by *Chart. Forestæ, Ar.* 9. may *agist* his own Wood within the King's Forest, at seasonable Times; the

Words of the Act are ' at his Pleasure', see **Swainmote**; but not with Goats or Sheep without Licence. *Quia præbent exilium ferarum Foreſtæ*, that is, they so taint the Pasture where they feed, that the Beasts of the Forest will not depasture there; so that they do as it were banish them from every Place where they are; but he may drive his Swine through the Demesne Woods for to *agist* them in his own; if the Swine lie one Night within the Forest, no Trepass; the *Agist* of Swine is for the Pannage.

If a Man who dwelleth within the Forest, and hath Common in the Waste, will take the Beasts of Strangers to *agist*, this is an Offence fineable to the King. *Manwood* 6.

Agistment, Signifies the Herbage of Lands or Woods, or the Money received, or due for the same, and is of two Sorts, *i. e.* of the Herbage of Woods, Lands and Pastures; and of Woods alone, *viz.* of the Masts of Trees, properly called Pannage. *Manwood* 2.

Agistment is only for such Beasts as are Commonable, *Manwood* 3. but not for Geese, Goats or Sheep.

Agistments must be inrolled in the Verderor's Roll, which Roll must agree with the Agistor's Account. *Ibid.* 4.

The Time of taking in *Agistments* of all Manner of commonable Beasts, in the King's

Demesne

Demesne Woods and Lands, for Herbage only, doth begin fifteen Days before *Midsummer*, and ends on *Holy-Rood-Day* 14th *September*; for Swine and Hogs to feed on the Mast, it begins on *Holy-Rood-Day*, and ends on the Feast of St. *Martin*. *Ibid.* 7, 8. See the Table.

Agistor, Is an Officer that takes Beasts to depasture within the Forest, and the Cattle which feed there are Levant and Couchant. He is constituted by Letters Patent, and in Forests where there is any Pannage (for where there are no Woods there are no *Agistors*) there be four in Number. 4 *Inst.* 293.

He is to present Trespasses done by Cattle. *Manwood* 11.

The *Agistors* alone are to receive the Money for Agistments and Pannage. *Manwood* 5.

Every *Agistor* in the King's Forest must bring before the Lord Chief Justice in Eyre of the Forest at the Justice-Seat, a true and just Account of what Money he hath received for any Agistment or Pannage (*a*) of the King's Woods and Lands. *Ibid.* 4. and likewise the Profit of Rushes, Fern, Gorse, Sedge, *&c.* *Itin. Lanc. fol.* 8. *Manwood* 232.

(*a*) The Time of Pannage begins on *Holy-Rood Day*, and ends 40 Days after *Michaelmas*. *Manwood* 228, 230.

If *Agistors* fail of their Rolls and Accounts, they shall be amerced and distrained by their Lands to bring in the same. *Ibid.* 333.

If he present any Thing which doth not belong to his Charge, the Presentment is void. *Ibid.* 11. And therefore one *Finch* was fined 10 *l.* at the Justice-Seat for the Forest of *Windsor*, for making the *Agistors* present Things which did not belong to them. *W. Jones* 280. See *Table.*

Amerciament. See **Distress, Reeve.**

Appearance at the Chief Justice-Seat. Those under the Age of twelve, those that are Sick or Blind, seventy Years of Age or upwards, those imployed in the Service of the King in any other Place, Archbishops, Bishops, Earls and Barons, though they have Lands within the Forest, are not compellable to *appear* at the Time when the General Summons is made. *Manwood* 14.

But Archbishops, Bishops, Earls and other Noblemen, who claim any Liberties, Freedoms or Privileges within the Forest, must *appear* upon such General Summons to claim the same: Otherwise such Privileges, *&c.* will be seized into the King's Hands for Non-claimer; but they need not *appear* in Person, but by Attorney. *Ibid.* *Vide* Table.

Apprentices. By Stat. 4 *&* 5 *W. & M. c.* 23. 'If any inferior Tradesman,

'*Apprentice*,

'*Apprentice*, or other diſſolute Perſon, ſhall 'hunt, hawk, fiſh or fowl [unleſs in Com-'pany with the Maſter of ſuch *Apprentice*, 'qualified by Law] ſhall be carried before 'a Juſtice of Peace, and being convicted 'before him upon Oath, ſhall forfeit not 'exceeding 20 *s.* nor under 5 *s.* one Moiety 'to the Informer, and the other to the 'Poor, *&c.* to be levied by Diſtreſs and 'Sale, and for want of Diſtreſs, ſhall be 'committed to the Houſe of Correction not 'exceeding one Month, nor under ten Days, 'there to be whipped and kept to hard La-'bour, and may be ſued and proſecuted for 'Treſpaſs in coming on other Perſon's 'Land; and if found guilty, the Plaintiff 'ſhall not only recover Damages, but his 'full Coſts of Suit.'

Law Caſe.

It was held, the Conviction on the Stat. 4 & 5 *W. & M. c.* 23. ſhewing the Defendant *exiſtens perſona diſſoluta*, *&c.* did hunt and kill ſo many Hares, *&c.* ought to be quaſhed, becauſe it did not ſhew he was not qualified. 2 *Mod. Caſe* 40.

Note; The Stat. 4 & 5 *W. & M. c.* 23. makes an inferior Tradeſman liable to full Coſts for hunting in another's Ground, notwithſtanding his being qualified by an Eſ-
1 Ld. *Raym.* 730.

Archbishop. See **Appearance.**

Arrentation, Is the Licensing an Owner of Lands in the Forest, to inclose them with a Hedge and a little Ditch, under a yearly Rent.

Assart. The Etymologists are not agreed in the Derivation of this Word, but they all agree in the Signification of it; which is to grub up or clear a Ground of Bushes, Shrubs, *&c.* and make it plain and fit for Tillage. And by *Manwood, p.* 20. is the Destroying of Coverts in Forest; and the Difference between a Waste of the Forest and an *Assart* is this; a Waste is the Felling or Cutting down any Covert of the Forest without Licence, but an *Assart* is the destroying a Covert and converting it into plain or arable Land.

There is a Difference between *assarting* the King's Woods and Lands, and those of other Men; for he who is found *assarting* the King's Land, is to be committed for the first Offence without Bail, (except delivered by the Chief Justice in Eyre or his Deputy) till he hath paid a Fine to the King; but the Lands of a common Person in the Regard of the Forest, is bailable for the first and second Offences, but not for the third; for in such Case his Body shall be imprisoned until he hath paid a Fine to the King, unless the Chief Justice in Eyre will bail him as aforesaid; and in both Cases the Fine is

Arbitrary. *Manwood* 21, 22, 23. See *Table.*

Attachiamenta *de Spinis & Bosco.* A Privilege granted to the Officers of a Foreſt, to take to their own Uſe, Thorns, Bruſh and Windfall, within their own Precincts or Liberties.

Attachment. The Court of the *Attachments*, or the *Woodmote* Court, is one of the three Courts of the Foreſt, and is to be kept before the Verderors every forty Days throughout the Year, and therefore is called the Forty-Day Court. At this Court the Foreſters bring in the Attachments of Vert and Veniſon, the Preſentment thereof, and the Verderors do receive the ſame, and inroll them, but this Court can only Inquire, and not Convict: But it is to be obſerved, that no Man ought to be attached by his Body for Vert or Veniſon, unleſs he be taken in the very Fact within the Foreſt, otherwiſe the *Attachment* muſt be by his Goods. 4 *Inſt.* 289. *Manwood* 23 *to* 32.

Badger. See **For.**

Bail. Treſpaſſer in a Foreſt committed to Priſon may be *bailed* upon giving ſufficient Sureties to appear at the next Eyre; if ſuch *Bail* is refuſed, he may in Term-Time move the Court of King's Bench for an *Habeas Corpus*, which will be granted, or he may move the Court of Common Pleas or Exchequer (if privileged) or the Court of

Chancery, either in or out of Term, and upon this Writ he may be *bailed* to appear at the next Eyre to be holden for the Foreſt. *Manwood.* 34.

A Foreſter may detain a Man till he gets *Bail. Ibid.* 35. See *Table.*

Bailiff. (*Ballivus*) See **Conſtable.**

Barons. See **Appearance.**

Bedel, Is derived from a *Saxon* Word, ſignifying *to call or warn*, and is an Officer of the Foreſt, that doth warn all the Courts of the Foreſt, executes the Proceſs of the Foreſt, and makes all Proclamations as well within the Courts, as without. 4 *Inſt.* 313. *Manwood* 36.

Biſhop. See **Appearance.**

Boar, Is a Beaſt of the Foreſt, and is called the 1ſt Year a *Pig of the Sounder*, 2d, A *Hog*, 3d, A *Hog's Steer*, 4th, A *Boar*, and after a *Sanglier*; and in Seaſon from *Chriſtmas* till *Candlemas*. 4 *Inſt.* 316.

Boundary. Foreſts muſt be meered and bounded with Marks, Meers and *Boundaries*, which are Rivers, Highways, Hills, Churches, and ſuch like; and for want of ſuch *Boundaries*, great and remarkable Trees have been uſed for the ſame. And they are either known by Matter of Record, or by Preſcription; and though a Foreſt doth lie open, and not incloſed with Hedge, Ditch, Pale or Wall, yet in the Eye of the Law it hath as ſtrong an Incloſure by theſe Marks,

Meers

Meers and *Boundaries*, as if it were incloſed with a Wall. *Manwood* 37.

By Stat. 17 *Car.* 1. *c.* 16. ‘ The Meets, ‘ Limits, Meers and *Boundaries* of all Fo‘reſts ſhall be taken, adjudged and deemed ‘ to extend no farther than they were com‘monly reputed, known, *&c.* in the 20th ‘ of King *James*.

It is abſolutely neceſſary that every Officer of the Pariſh ſhould know the *Boundaries*, *&c.* For though by Stat. 21 *Ed.* 1. ‘ A Fo‘reſter, *&c.* ſhall not be queſtioned for kil‘ling a Treſpaſſer who will not yield him‘ſelf; yet in this Caſe the Limits of the ‘ Foreſt are iſſuable, becauſe the killing of ‘ the Offender within the Limits or with‘out, makes it Felony, or not. And alſo ‘ if a Man be preſented for killing a Beaſt ‘ of the Foreſt, if it was killed out of the Li‘mits thereof, it may be no Offence againſt ‘ the Foreſt Laws. *Manwood* 40. Vide *Table*.

Bow-Bearer, An under Officer of the Foreſt, who is to make Inquiſition of Treſpaſſes done, either to Vert or Veniſon, and preſent the Offenders the next Court of Attachment.

Browſe, Are young Sprouts of Trees that ſhoot out early in the Spring.

Buck, Is the firſt Beaſt of Chaſe, and is called the firſt Year a *Fawn*, ſecond a *Pricket*, third a *Sorel*, fourth *Sore*, fifth a *Buck of*

the Head, ſixth a *Buck*. The Seaſon begins at *Midſummer*, and ends at *Holy-Rood-Day*, *viz.* fourteenth of *September*.

An Indictment for chaſing a *Buck* in the King's Foreſt with Wares.

Eſſex, *to wit.* THE *Jury for our Sovereign Lord the King upon their Oaths preſent, That* B. T. *late of* G. *in the County of* E. *Gentleman, the* 30*th Day of* October *in the ſeventh Year of the Reign*, &c. *the Foreſt of our ſaid Lord the King, of* E. *in the ſaid County of* E. *broke and entered, and one* Buck *to the Value of* 20s. *then and there found, without Licence and Conſent of the ſaid Lord the King, with Grey-hounds hunted and chaſed, and the ſaid* Buck *at* S. *within the Precincts of the Foreſt aforeſaid, with Wares did hang and kill, and that* Buck *ſo hanged and killed unjuſtly took and carried away, againſt the Peace of our Sovereign Lord the now King, his Crown and Dignity.*

A Warrant for a *Buck*.

To the Keeper of, &c.

UPON *Sight hereof, you are to kill and deliver to* R. C. *Eſq; one fat* Buck *of this*

this Season, for which this shall be your Warrant.

Dated, *&c.* R. P.

Buckstalls, Are Toils to take Deer.

Certiorari. By 5 *Geo.* 1. *c.* 15. 'no 'Certiorari shall be allowed to remove any 'Conviction, or other Proceedings on the '3 & 4 *W.* & *M. c.* 10. unless the Party 'convicted shall before the Allowance there-'of, and at the same Time that Security is 'given for the Payment of the Costs and 'Damages to the Prosecutor, (see the Note 'following) become also bound to the Ju-'stice before whom such Conviction was 'made, with such Sureties as the Justice 'shall approve of, in 60 *l.* Penalty for each 'Offence, with Condition to prosecute such 'Writ with Effect, and to pay such Justice 'the Forfeitures due by such Conviction, to 'be distributed as the said Statute directs, 'or to render the Offender within one 'Month after Conviction confirmed, or a '*Procedendo* granted; in Default, the Ju-'stice and all other Persons whatsoever may 'proceed to execute such Conviction, and 'the Justice may proceed after Confirma-'tion of a Conviction, as if a *Procedendo* 'had been granted.

Note; It is by the said Stat. of 3 & 4 *W.* & *M. c.* 10. that no *Certiorari* shall be allowed

allowed to remove any Conviction, or other Proceedings upon this Statute, unleſs the Offender become bound to the Proſecutor in 50*l.* with Sureties to be approved of by the Juſtice, to pay, within a Month after Conviction confirmed, or a *Procedendo* granted, ſuch Proſecutor his full Coſts to be aſcertained on Oath.

Law Caſes.

Adjudged that a *Certiorari* ſhall not be allowed to remove a Preſentment by any Foreſter, for ſelling Wood before Conviction at the Swainmote; for if it ſhould, then the Courts of the Foreſt would be deprived of their Juriſdiction. *The King* againſt *Maxis*, 2 *Keb.* 81. *Sid.* 296.

The Defendant was convicted for ſtealing Deer, and by Virtue of a Warrant, *&c.* a Diſtreſs was taken for the Forfeiture, and a *Certiorari* was afterwards brought to remove the Conviction into the King's Bench, and after *the Record was removed, the Conſtable ſold the Goods which he had ſeiſed, and kept the Money*, and would not return the Warrant, *&c.* And it was held, that the Conſtable might proceed in the Execution of the Warrant after the *Certiorari* was allowed, becauſe it was begun before; and that the Writ was no more a *Superſedeas*, than a Writ of Error was to ſtay an Execution upon

a

a *Fieri facias already begun*; and that the Court had no Power over this Warrant, because it was granted before the *Certiorari* issued; therefore they would make no Rule on the Constable to return the Warrant, but said the Justices might fine him if he did not return, or pay the Money to the Prosecutor. *The Queen* against *Nash*, 1 *Salk.* 147. See *Law Cases*, Tit. *Deer.*

Chase, Is derived from *Chasser* to chase, and is a privileged Place for the Receipt of Deer, *&c.* being of a middle Nature betwixt a Forest and a Park. It is commonly less than a Forest, and not indowed with so many Liberties; as Officers, Laws, Courts, *&c.* and yet is of a larger Compass than a Park, having more Officers, *i. e.* Keepers, Woodwards and Game, than a Park. Every Forest is a *Chase*, but every *Chase* is not a Forest. It differs from a Park in that it is not inclosed; for if it is inclosed it is a good Cause of Forfeiture, though it must have certain Metes and Bounds. It is not lawful to make a *Chase*, Park or Warren without Licence under the Broad Seal. *Wood's Inst.* 207.

A *Chase* is governed by the Common Law, and such as were never Forests cannot have any Purlieu. 4 *Inst.* 314, 303.

The Beasts of the *Chase* are the *Buck*, *Doe*, *Fox*, and formerly the *Martern* and the *Roe*. *Manwood* 50.

The

The Beaſts of the *Chaſe* frequent the Fields, Hills and Mountains in the Day-time, and the Valleys, Corn-fields and Meadows in the Night, *Ibid.* 51. and are called *Campeſtres*, becauſe they frequent the Fields more than the Woods.

If a Man hath a *Chaſe* adjoining to a Foreſt, if he deny the Keepers of the Foreſt to fetch back the hunted Stag, this is fineable; but Red Deer may be in a *Chaſe* by ſpecial Claim. *Ibid.*

A Grant may be made to one to *have a Chaſe in a Foreſt*; but yet in ſuch Caſe the Grantee ought not to hunt or kill any Stag or Red Deer, or other Beaſt of the Foreſt, if he doth, 'tis an Offence, and finable. *W. Jones* 278.

Where a Man hath a Freehold in a free *Chaſe*, he may cut down Timber without View or Licence of any Perſon; which he cannot do in a Foreſt; but if he cut ſuch a Quantity, that there is not enough for *Covert*, and to maintain the Game, he ſhall be puniſhed at the King's Suit; ſo if he hath a *Chaſe* in another Man's Soil, the Owner cannot deſtroy all the *Covert*, but muſt leave ſufficient for the Deer to browſe. 12 *Rep.* 22. *W. Jones* 276. S. P. 2 *Cro.* 155. S. P. 4 *Inſt.* 298. S. P.

The Owner of the Soil in a *Chaſe* may have Common for Sheep, and feeding for his Conies there, either by Grant or Preſcription;

scription; but he must not surcharge it with more than hath been usual, neither can he make any new Coney-Burrows. 12 *Rep.* 22. 2 *Cro.* 22. Vide *Table.*

Chief Justice in Eyre, Is an Officer of great Honour and Authority, and is a Peer, and always of the Privy Council. In former Days this great Officer was created by Writ as other *Justices in Eyre* are, but now by the Stat. of the 27 *H.* 8. *c.* 24. he is made by Letters Patent under the Great Seal. As his Office is * Judicial, it was doubted whether he could lawfully make Deputies; therefore to avoid such Ambiguity and Doubt, the Stat. of the 32 *H.* 8. *c.* 35. was made, whereby it is enacted, 'that every Justice of the King's Forests, Parks and Chases, may by Writing under the Hand and Seal of his Office, depute 'as many Deputies as he pleases, which shall 'have the same Power and Authority as if 'he was personally present.

The *Chief Justice in Eyre* (according to my Lord *Coke*) is commonly a Man of greater Dignity than Knowledge in the Laws of the Forest, and therefore where Justice-Seats (the Court of the *Chief Justice in Eyre*) are to be held, some other Persons by the King's Appointment are associated to him, who together

* By the Common Law a judicial Officer cannot make a Deputy.

ther are to determine all Pleas of the Forest, and the *Chief Justice in Eyre*, and those Associates, are the Chief Justices of the Forest, so called in Respect of the Verderors and others, who, to some Purposes, have judicial Places. 4 *Inst.* 314.

There are two *Chief Justices in* * *Eyre*; one for the Forest on this side *Trent*, the other beyond. *Manwood* 57. See **Justice-Seat.**

Chiminage, Is a Toll for Passage thro' a Forest, due by Custom.

By * *Chart. Forestæ, c.* 14. No *Chiminage* shall be taken in Forests, but by Foresters in Fee, that Farm their Bailiwick, and only of such as buy their Bushes, Timber, Bark or Coal, to sell it again, *viz.* 2 *d.* for a Cart, and 1 *d.* for a Horse, to be taken half-yearly; and it shall be only taken where it hath used to be taken, and not elsewhere; neither shall any *Chiminage* be taken of such as carry Burthens of Bushes, Bark or Coal, albeit they sell it, unless they take them out of the King's Demesne Woods.

Claims in Forests. Those who *claim* ought to make it on the first Day of the Justice-Seat,

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* In *Latin Iter*; and the *Eyre* of the Forest is the Justice-Seat.

† This Charter was made at *Westminster* 10 *Febuary* 9 *H.* 3. *Anno Dom.* 1224. (and confirmed 28 *Ed.* 1. *Anno Dom.* 1299.) 208 Years after the Charter of *Canutus* the *Dane*.

stice-Seat, either in Person or by Attorney, otherwise their *Claim* shall not be received without paying a Fine; for if it is once put in, and afterwards it should appear to be faulty, it is not to be amended without a Fine, or if put in and not prevented to get an Allowance, Judgment shall be entered against them for Default of Prosecution. 4 *Inst.* 297. *Manwood* 80. *Jones Rep.* 297.

If a Man makes his *Claim* by Grant or Prescription, and he and his Counsel mistake his right Title in some material Point, so as the *Claim* is found against him, it is good for him that his true Title be found by the same Verdict specially, for then he may by Petition make a Fine and pray Licence to make a new *Claim*, and thereunto he ought to be admitted. 4 *Inst.* 297.

In Trial of *Claims*, 'tis to be observed, if a Man claim to be a Forester in Fee, either by Prescription, Grant or Tenure, and prayeth, that it may be inquired by Ministers of the Forest, in this Case the Verderors, Regarders and Agistors shall try the Title; but if a Man *Claim* by Inheritance, or otherwise, any Profits Apprender, as Common of Estovers or Pasture, in this Case the Trial shall be by the Foresters, Verderors, Regarders, and not by Agistors. *Manwood* 80.

If a Man makes a *False-claim* by *claiming* more than he ought, he shall be fined for his

his *False-claim*, but that which he ought to have shall not be seised. 4 *Inst.* 297. See *Appearance*.

Common. By *Chart. de Foreſtæ*, *Art.* 1. 'Where the King hath afforested his own 'Woods or Lands, the same shall remain a 'Forest, saving Common of Herbage and 'other Things within the Forest, to such 'as have been accustomed to injoy them.'

By *Ord. Foreſtæ*, *Art.* 1. 'Those to whom 'the King hath granted Purlieus (whereby 'their Woods are disafforested) shall be quit 'of the Charge of the Forest, but then 'they are to have no *Common* within the 'Forest. Howbeit, such as are willing to 'return their Woods into the Forest, shall 'injoy *Common* and other Easements there, 'as they did before.'

A Man may claim *Common Appurtenant* in a Forest by Prescription, for all Manner of Beasts which are *commonable* in a Forest; so likewise he may prescribe to have *Common by Reason of Vicinage*, or *Common Appendant*; a Man may also have *Common in Gross*; and he who hath such a *Common*, may use and injoy it there according to the Purport of his Grant; for this Sort of *Common* is by Deed only, and not by Prescription; but all the other three Sorts of *Commons* are by Prescription only, without Deed. And no other Title can a Man have to a *Common* in a Forest. *Manwood* 89, 90, 91, 92, 93.

In

In the Case of *Grammer* against *Watson*, a special Verdict was found, That *Alamore* Waste was in the Forest of *Sherwood*; and that the Messuage and 30 Acres of Lands, for which the Defendant prescribed to have *Common*, was within the Purlieus of the said Forest; and they found the Defendant had Right of *Common* there, *&c.* but whether such a *Prescription to have* Common *in a Forest* was good or not, they left to the Judgment of the Court. In arguing this special Verdict, the Counsel for the Plaintiff objected, that the Prescription alledged in Bar was ill; it being *to have* Common *in a Forest* absolutely, without excepting the *Fence-month*, and also for *Sheep* which are not *Commonable* in a Forest, because they bite so near, that the Deer may be starved: But these Objections were not allowed, because there are Authorities in Point, that a Man may *prescribe for* Common *for Sheep in a Forest*, viz. 2 *Cro.* 155. *W. Jones* 285. and likewise without excepting the *Fence-month*. 3 *Lev.* 98. *Trigg* and *Turner*'s Case. And the Defendant had Judgment. *Compleat English Copyholder*, Tit. *Alamore*.

All the Inhabitants in *Egham* Forest joined to have Claim for all Cattle *commonable*. *Per Cur.* They ought not to have joined in one; it is true, Tenants in Ancient Demesne may join in a Claim for *Common*, &c. because the King cannot claim for them; but other Men, if Copyholders,

Copyholders, they must only join who are Tenants to one Lord, and the Lord must prescribe for him and his Tenants. *W. Jones Rep.* 276, 286. See *Staff-herding*.

Prescription to have *Common* is good, without an Allowance in Eyre, because it is an equitable Prescription, and in nature of a *Common*-Right; for since the Deer have fed on my Grounds, it is reasonable I should have *Common* in the Forest.

Note; A Forest may be disafforested and laid open, but Right of *Common* shall remain. *Poph.* 93. See *Table*.

Coney, Is a Beast of Warren, and is called the first Year a *Rabbet*, and afterwards an old *Coney*.

By Stat. 22 & 23 *Car.* 2. *c.* 25. * 'If 'any Man shall enter wrongfully into 'Ground kept for breeding *Conies*, though 'not inclosed, and chase, take or kill any 'against the Owner's Will, and be thereof 'convicted, they shall render treble Damages and Costs, and be imprisoned three 'Months, and till they find Sureties for 'their good Abearing.

'Persons

* *Note*; This Statute extends to all Warrens, whether inclosed or not. *Hill.* 1 *Geo.* 1. *King* and *Weston*. And Note also, that Conviction upon the Statute must be by Confession, or Oath of one sufficient Witness, within a Month after the Offence, and before one Justice of the Division.

'Persons that kill or take in the Night-time *Conies* upon the Borders of Warrens, or on other Grounds used for keeping of *Conies*, or except Owners, Occupiers, or Persons imployed by them, shall make such Recompence, and within such Time, as shall be appointed by the Justice of Peace before whom they shall be convicted, and pay to the Overseers for the Poor of the Parish where the Offence shall be committed, such Sum as the said Justice shall think fit, not exceeding 10*s.* in Default whereof they shall be committed to the House of Correction, for any Time not exceeding a Month, and they that use Snares, Hare-pipes, and other Engines, shall be liable to the same Penalty.'

'Persons aggrieved by the Judgment of a Justice of Peace, may appeal to the next Quarter-Sessions, whose Order shall be final, if no Title to any Land or Royalty be therein concerned.'

A Lease of a Warren *of* Conies.

THIS Indenture *made the* 20*th Day of* July *in the* 24*th Year of the Reign of our Sovereign Lord* George *the* Second, *by the Grace of God, of* Great Britain, France *and* Ireland, *King, Defender of the Faith,* &c.

&c. *and in the Year of our* Lord 1750. **Between** C. K. *of*, &c. *of the one Part, and* W. R. *of*, &c. *of the other Part,* **Witnesseth,** *That the said* C. K. *for and in Consideration of the Yearly Rent and Covenants herein after mentioned on the Part and Behalf of the said* W. R. *his Executors, Administrators and Assigns, to be paid, kept, done and performed,* **Hath** *demised, granted and to farm letten, and by these Presents Doth demise, grant, and to farm let, unto the said* W. R. **All** *that,* &c. *and all the Conies in the said Ground being, and to the same belonging, with the Increase, Gains, Profits and Advantages from Time to Time arising, coming, growing and renewing of and from the said* Conies, *there to hunt, hay, ferret and pitch Nets, or otherwise to use the same, to and for the most Benefit and Advantage of the said* W. R. *his Executors, Administrators and Assigns, that he or they can or may devise, in as large, ample and beneficial Manner and Form, as the said* C. K. *or any Person or Persons have heretofore had, held, used, occupied or injoyed the same;* **To have and to hold** *all the said Warren or Piece of Ground, and Game of* Conies *in the same being or thereunto belonging, with all the Increase, Gains, Profits and Advantages of the same as aforesaid, unto the said* W. R. *his Executors, Administrators and Assigns, from the Feast of* St. Michael *the* Archangel *next insuing the Day of the Date of*

these

these Presents, for and during and unto the full End and Term of seven Years from thence next insuing and fully to be compleated and ended; **Yielding and Paying** *therefore Yearly and every Year, during the said Term of seven Years hereby granted unto the said* C. K. *his Heirs or Assigns, the yearly Rent or Sum of* 10l. *of lawful Money of* Great Britain, *on the four most usual Feasts or Quarter-days for Payment of Rent in the Year; that is to say, on the Feast-day of the Birth of our Lord* Christ, *the Feast of the Annunciation of the Blessed Virgin* Mary, *the Nativity of* St. John *the* Baptist, *and the Feast of* St. Michael *the* Archangel, *by even and equal Portions, and quarterly Payments; the first Payment thereof to be made on the Feast-day of the Birth of our Lord* Christ *next insuing the Day of the Date of these Presents.* **And** *the said* W. R. *for himself, his Executors, Administrators and Assigns, and for every of them, doth covenant, promise and agree, to and with the said* C. K. *his Heirs and Assigns by these Presents, in Manner and Form following, (that is to say) that he the said* W. R. *his Executors, Administrators and Assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said* C. K. *his Heirs or Assigns, the said yearly Rent or Sum of* 10l. *before hereby reserved, in such Manner and on the Days and Times herein before limited and appointed for Payment thereof during the said Term hereby demised:*

demiſed: [a Covenant to Repair, and at the End to leave the Berry and Coney-Clappers ſufficiently covered with Thorns, *&c.* and leave the ſame ſufficiently ſtored with *Conies*, and a Covenant for quiet Injoyment.]

Amends pleaded for killing of a *Coney*.

And as to the Taking of the Coney aforeſaid, that he in going by the publick Highway there killed the Coney *aforeſaid, leaping before him, for which he often offered to pay the ſaid Plaintiff reaſonable Amends (that is to ſay) ten Pence for that ſaid* Coney, *and is now ready here in Court to ſatisfy him thereof by the Diſcretion of the Court*, &c. *and this*, &c.

A Mittimus againſt a Perſon that refuſeth to enter into Recognizance to appear at Seſſions, for offending againſt *Stat.* 22 & 23 *Car.* 2.

To the Keeper, *&c.*

Middleſex, to wit. FOr*aſmuch as* H. H. *of*, &c. *being this preſent Day brought before me by Warrant, by the Conſtable of*, &c. *and being examined did upon his Examination confeſs, that he had kept and uſed Nets and Ferrets for the taking and killing of* Conies *by the*

the Space of one Year last past, contrary to the Statutes in that Case made and provided; and he the said H. H. *being required to enter into Recognizance for his Appearance at the next General Quarter-Sessions of the Peace to be holden for the said County, did refuse so to do; These are therefore in His Majesty's Name strictly to charge and command you, that you receive into your Custody the Body of the said* H. H. *whom I send to you by* W. K. *one of the Constables of,* &c. *and him safely keep until he shall enter into such Recognizance as aforesaid, or that he be otherwise discharged according to Law: And hereof fail not at your Peril.* Given under my Hand and Seal, *&c.*

An Indictment upon the Stat. of 22 & 23 *Car.* 2. *c.* 25.

Middlesex, to wit. THE *Jury for our Sovereign Lord the King upon their Oaths say, that* H. O. *of* H. *in the County aforesaid, Yeoman, the* 14*th Day of* August *in the seventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God of* Great Britain, France *and* Ireland, *King, Defender of the Faith, and so forth, with Force and Arms, to wit, with Sticks, Hedging-Bills, Guns, Bows, and other offensive Weapons, the Free-Warren of* R. B. *at* H. *aforesaid in the County aforesaid, about the*

Hour of eleven in the Night of the ſame Day, broke and entered, and in the ſame Free Warren, with Greyhounds, Ferrets and Purſenets, without the Licence and againſt the Will of the aforeſaid R. B. *did come, and fifty Conies of the Value of* 25*s. of the Goods and Chattels of him the ſaid* R. B. *then and there found took and carried away, to the great Damage of him the ſaid* R. B. *and againſt the Peace of our now Sovereign Lord the King, his Crown and Dignity, and alſo againſt the Form of the Statute in ſuch Caſe made and provided.* See *Deer.*

Law Caſes.

If a Man ſhould make *Coney-Burrows* in his own Ground, and put in *Conies*, and they increaſe ſo faſt, that they run into his Neighbour's Ground and deſtroy his Graſs, it hath been a Queſtion whether he may kill them; and it was adjudged in *Boulſton*'s Caſe that he might, and the Reaſon there given is, becauſe they are *feræ Naturæ* [*of wild Nature*]; but a better Reaſon is, becauſe a Man hath a Property in them *ratione loci* [*by reaſon of the place*] when they are on his own Land; and therefore he may juſtify the killing *them. Boulton*'s Caſe, *Rep.* 104.

But 'tis otherwiſe if they are killed by him who hath a *Right of Common* only; as for Inſtance, In Treſpaſs for digging his Cloſe and

and killing eighteen *Conies*, the Defendant pleaded Not guilty as to all the Treſpaſs beſides the Killing eighteen *Conies*; and as to them he pleaded, that the Place where, *&c.* was a great Heath in which he had Common of Paſture, and that he found thoſe *Conies* eating the Graſs there, and ſo juſtified the Killing them, *&c.* Adjudged, that though *Conies* are *feræ naturæ*, yet when they are on the Lands of another, he hath a Property in them by Reaſon of the Poſſeſſion, and therefore an Action lies either for killing or taking them; therefore in this Caſe, the *Conies* being on the Land of the Plaintiff, who had the Inheritance thereof, and the Defendant having only a Right of Common on thoſe Lands, he might have an Action on the Caſe, but could not juſtify the Killing them. *Coney*'s Caſe, *Godb.* 122. 4 *Leon.* S. C. By the Name of *Ould* againſt *Lucy*, 2 *Leon.* 201. S. C.

There is a Caſe in *Cro. Car.* where it was otherwiſe reſolved, *viz.*

The Plaintiff brought an Action on the Caſe againſt the Defendant, for that he (the Defendant) having a Wood adjoining to a Common where the Plaintiff and other Copyholders of the Manor of *H.* had Right of Common, the Defendant kept *Conies* in his Wood, which ran out into the Common, and eat up the Graſs, *&c.* Adjudged, that the Action did not lie, becauſe when the

Conies were out of the Wood, the Defendant had no Property in them, and the Plaintiff could be at no Inconvenience, for he *might kill them*; which is very true, if they had been *on his own Land*, but he had only a Right of Common there. *Hilsley* againſt *Wilkinſon*, *Cro. Car.* 387. *W. Jones* 356. S. C.

And ſo are the Authorities both before and after that Caſe, (*viz.*) In Treſpaſs for breaking and entring his Cloſe, and killing his *Conies*, the Defendant juſtified and preſcribed for Common in the Place where the Treſpaſs was ſuppoſed to be done, as appertaining to his Meſſuage in *H.* and becauſe the *Conies* were feeding on his Common he killed them; and upon a Demurrer to this Plea it was inſiſted for the Defendant, that he might *juſtify the Killing them*, becauſe he had no other Remedy, as he might juſtify killing Foxes, or any other Vermin; but adjudged, that he could not *juſtify the Killing of Conies*, becauſe the Owner of the Soil where they are feeding hath a poſſeſſory Property in them againſt all People when they are there; and the Commoner hath no Manner of Right in the Soil itſelf, for he is only to take his Common, and may bring an Action againſt him who diſturbs him; beſides, *Conies* are Beaſts of Warren and profitable Beaſts, and therefore are not to be compared with Vermin, and the keeping of them is lawful, and the killing

ſing them by the Commoner unlawful. *Bellow* againſt *Langden*, *Cro. El.* 876. *Owen* 114. S. C.

So in Treſpaſs for breaking his Cloſe, *necnon liberam Warrenam intravit*, [*alſo for entring his free Warren*] and for taking and carrying away ſo many *Conies*; the Defendant juſtified, for that he was ſeiſed of a Meſſuage and Lands in, *&c.* and preſcribed to have Common in the Place where the Treſpaſs was ſuppoſed to be done, and that he was there ready to uſe his Common, and then ſets forth, that many *Conies* were there Damage-feaſant, thereupon he entred and chaſed them out; and upon a Demurrer this was adjudged an ill Plea, becauſe the Plaintiff being only a *Commoner*, hath no Intereſt in the Land; he is only to take his Common, but cannot preſcribe againſt the Lord, for as he may have great Beaſts there, ſo he may have Beaſts of Warren, and the Commoner cannot deſtroy them. *Hoddeſden* againſt *Griſſel*, 2 *Cro.* 195. *Palm.* 368. S. C. *Yel.* 44, 143. S. C. 2 *Bulſt.* 110. S. C. *Brownl.* 208. S. C. *Winch* 16. S. C. *Bridgm.* 10. S. C. *W. Jones* 12. S. C. by the Name of *Griſſel* againſt *Leigh.* See 1 *Brownl.* 227. *Lawley* againſt *Park*, S. P.

Upon a Demurrer the Queſtion was, whether a Man who hath Right of Common might deſtroy the *Conies* feeding on the Land,

and fill up the *Coney-Burrows* in the waſte Ground; and adjudged that he could not, becauſe he hath no Intereſt in the Soil, other than to take the Common by feeding his Cattle there; and therefore muſt not fill up the Burrows, nor deſtroy the *Conies*. *Horſey* againſt *Heyburton*, 2 *Cro.* 229.

In Treſpaſs for hunting three hundred *Conies*, with a *Continuando* from ſuch a Day to ſuch a Day; the Defendant juſtified, for that he had Right of Common in the Place where, *&c.* for 240 Sheep, as to his Meſſuage in *H.* appertaining, and that he, and all thoſe whoſe Eſtate he had therein, *&c.* have uſed, when and at ſuch Time as the Common was ſurcharged with *Conies*, to hunt, kill, and carry them away, *as to his ſaid Meſſuage belonging*, *&c.* And upon a Demurrer to this Plea it was adjudged, that the Preſcription was void, for as a Man cannot preſcribe in the Freehold of another, ſo he cannot preſcribe to hunt and kill *Conies*, *as to his Meſſuage belonging*. *Samborn* againſt *Harrilow*. *Sandford* againſt *Howell*, *Bridgm.* 21. *Godb.* 184.

Caſe, *&c.* wherein the Plaintiff made a Title under Coparceners, and preſcribed in them to have a Right of Common in *Hartſhorn*, as appurtenant to his Meſſuage there; and that the Defendant had made a Warren in the Common and *Coney-Burrows*, and put in *Conies*, *&c.* by Reaſon whereof he could not

not injoy his Common so beneficially as before; the Defendant prescribed to have a free Warren within the Manor of *H.* and so justified the making *Coney-Burrows*, and putting in *Conies*, *&c.* and averred, that the Plaintiff had sufficient Common; the Plaintiff replied and maintained his Declaration, and traversed the Sufficiency of the Common, and the Defendant's Prescription to a free Warren; and upon a Demurrer to this Replication it was objected against the Plea, that the Lord of the Soil could not make *Coney-Burrows*, and put in *Conies* there to the Prejudice of the Defendant, who hath Right of Common, so that he could not injoy the Benefit thereof; but the Plaintiff had Judgment, by which it appears the Lord might do it; but that if the *Conies* multiply so fast, that the Plaintiff could not injoy his Common, he might have an Action on the Case against the Lord. *Hassard* against *Cantrel*, 1 *Lutw.* 107. *Abridg. of Lutw.* 37.

In Trespass for breaking his Close and hunting there, and killing *Centum Cuniculos suos*, *&c.* upon Not guilty pleaded, the Plaintiff had a Verdict and intire Damages; and it was moved in Arrest of Judgment, that the Declaration was not good, because the Plaintiff could not have any *Property in the Conies*, and therefore could not call them *suos*, as he did in his Declaration, because they are *feræ naturæ*, and by Consequence

nullius in Bonis; 'tis true if he had a Warren, then an Action *quare Warrenam fregit & Cuniculos suos cepit* might be well enough; but adjudged, that a Warren is only a Franchise to keep the *Conies*, and the Owner of such Warren hath no greater Property in them in the Warren, than any other Man hath, when they are on his Lands; now in the principal Case the *Conies* being on the Plaintiff's Lands, he hath a local Property in them whilst they are there, and no body can justify the Killing them. *Sutton* against *Moody*, 2 *Salk.* 556. *Newton* against *Richards*, *Godb.* 174. S. P. 1 Ld. *Raym.* 251.

In an *Action of Waste* against the Lessee of a Warren, the Waste assigned was, *Stopping Coney-Burrows*: Adjudged, that the *Action* would not lie, because a Man cannot have the *Inheritance of Conies*, nor any Property in them, but only the Possession; 'tis true an *Action* will lie against him who makes Holes in the Land, but not against him who stops them up, because the Land is better by making it plain. *Moyle* against *Moyle*, *Owen* 66.

One *Yates* was convict of killing Rabbits in a private Warren, by Inquisition taken before a Justice of Peace and was fined 20*s.* a Rabbit. Motion to quash the Inquisition, because the Justices of the Peace have no Authority to set a Fine upon a Man for such

such Offence, for the Stat. 22 & 23 *Car.* 2. *c.* 25. gives treble Costs and Damages, but no Fine; and the Stat. 4 & 5 *W.* & *M.* *c.* 23. extends only to Game, which cannot be intended to Rabbits kept in a private Warren; and of this Opinion was the whole Court; and therefore the Inquisition was quashed. *Rex* v. *Yaites*, 1 Ld. *Raym.* 151. See *Table*.

Constable. By **Chart. Forestæ**, *c.* 16. 'No *Constable*, Castellain or Bailiff, shall 'hold Plea of the Forest, neither for green 'Hue or Hunting.

Cottages. The Statute which gives Power to erect *Cottages* in the Waste for poor People, doth not extend to Wastes within Forests. 1 *Jones Rep.* 168, 169.

Coverts, Are those Woods which are Thickets, and full of Trees touching one another, and signifies a covering or hiding Place for the Deer.

Danger, A Duty paid to the Lord for Liberty to Plough and Sow in Mast-time.

Disafforested, Signifies discharged from being a Forest; or Free and Exempt from the Forest-Laws.

Diswarrened, Is when a Warren is *diswarrened*, or broke up and laid in Common.

Deer. By **Chart. Forestæ**, *cap.* 10. 'None shall lose Life or Member for Kil-

'ling of *Deer*, but he ſhall be Fined for it, 'if he have any Thing; if not, he ſhall be 'Impriſoned a Year and a Day, and (if he 'can find good Sureties) ſhall then be deli-'vered; but if not, he ſhall then abjure the 'Realm.'

By **Stat.** * 3 *Jac.* 1. *c.* 13. 'None ſhall '(without the Owner's Licence) Kill or 'Chaſe any *Deer* or Conies in any Parks or 'incloſed Grounds, in Pain to ſuffer three 'Months Impriſonment, to pay treble Da-'mages to the Party grieved, to be aſſeſſed 'by the Juſtices before whom he ſhall be 'convicted, after the ſaid three Months ex-'pired, and to be bound with two good 'Sureties to his good Behaviour for ſeven 'Years, or to remain ſtill in Priſon till he 'find ſuch Sureties: But the Party grieved '(being ſatisfied) hath Liberty to releaſe the 'Behaviour.'

'Juſtices of *Oyer* and *Terminer*, Aſſize 'and Peace in Seſſions have Power to hear 'and determine theſe Offences; and Juſtices 'of Peace in Seſſions (upon Confeſſion and 'Satisfaction to the Party grieved) have 'Power to releaſe the Behaviour.'

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* The Statutes before this Time, *viz.* 13 *R.* 2. *c.* 13. and 5 *Eliz.* *c.* 21. being found ineffectual to ſuppreſs Offences of this Nature; therefore to provide a more circumſpect Remedy, this Statute was made.

'This

'This Act shall not extend to any Park 'or inclosed Ground hereafter to be made 'or used for *Deer* or *Conies*, without the 'King's Licence.'

'By **Stat.** 7 *Jac.* 1. *c.* 13. 'It shall 'be in the Election of the Party grieved, 'whether he will take for Satisfaction 10*l.* 'in Money, or treble Damages, as by the 'foregoing *Statute*.

By **Stat.** * 13 *Car.* 2. *c.* 10. 'They that 'course, kill, hurt or take away red or fallow *Deer* in any Ground where *Deer* are 'kept, without the Consent of the Owner, 'or Person chiefly intrusted therewith, or 'are aiding therein, if convicted by Confession or Oath of one Witness before one 'Justice of the Peace, being prosecuted 'within six Months after the Offence done, 'shall forfeit 20*l.* to be levied by Distress by 'Warrant under the said Justice's Hand; one 'Moiety thereof to the Informer, the other 'to the Owner of the *Deer*; and for want 'of such Distress, shall be committed to 'the House of Correction for six Months, 'or the common Gaol for a Year, and 'not to be discharged till Security given for 'their good Behaviour one Year after their 'Inlargement.'

* By this Statute a Reward is given to an Informer, which was not before.

'None

'None punished by Virtue of this Act 'shall incur the Penalty of any other Law 'for the same Offence.'

By **Stat.** 3 & 4 *W. & M. c.* 10. 'If 'any Persons shall unlawfully course, hunt, 'take in Toils, kill, wound, or take away 'any Red or Fallow *Deer*, in any Forest, 'Chase, Purlieu, Paddock, Wood, Park, 'or other inclosed Grounds, where *Deer* are 'or shall be usually kept, without the Con-'sent of the Owner, or Person intrusted 'with the Custody thereof, or be Aiding 'therein, and shall be convicted by Confes-'sion or the Oath of one Witness, before a 'Justice of Peace of the County where the 'Offence shall be committed, or the Party 'apprehended, within twelve Months after 'the Offence, shall forfeit for every such 'Offence 20 *l.* for every *Deer* wounded, 'taken, or killed 30 *l.* to be levied by Di-'stress and Sale of Goods, by Warrant from 'the Justice before whom the Conviction 'shall be made, one third to the Informer, 'the other third to the Poor where the 'Offence shall be committed, and the other 'third to the Owner of the *Deer*. And for 'want of Distress, to be Imprisoned a Year, 'and set in the Pillory an Hour on some 'Market-Day, in the next Town to the 'Place where the Offence was committed.

'Constables, *&c.* by a Justice's Warrant, 'may enter and search as for Stolen Goods;

'and

'and if any Veniſon or Skins of *Deer*, or 'Toils be found, ſhall carry ſuch Offender 'before a Juſtice of Peace; and if he do 'not give a good Account how he came by 'them, and in ſome convenient Time pro-'duce the Party of whom he bought them, 'or prove ſuch Sale upon Oath, he ſhall be 'convicted of ſuch Offence, and be ſubject 'to the Penalties hereby inflicted for killing 'a *Deer*.'

'The Conſtable, *&c.* or Perſons proſe-'cuting, may detain ſuch Offenders in Cu-'ſtody, if they do not preſently Pay the 'Monies due by the Conviction, till a Re-'turn may be made of the Warrant for 'Diſtreſs, ſuch Detainer not exceeding two 'Days.'

'Owners of any ſuch *Deer*, or any acting 'under them, may reſiſt ſuch Offenders, 'and be indemnified, as if ſuch Fact had 'been committed in any ancient Chaſe or 'Park.'

'No Offender puniſhed by Virtue of 'this Act ſhall incur the Penalty of any 'other Law for the ſame Offence.'

'All Perſons proſecuted for any Thing 'done in Purſuance of this Act, may plead 'the general Iſſue, and give the ſpecial 'Matter in Evidence.'

By **Stat.** 5 *Geo.* 1. *c.* 15. 'After Con-'firmation of any Conviction on the above '*Stat.* of 3 *&* 4 *W. & M.* by any ſuperior 'Court,

'Court, and delivering the Rule to the Ju-
'ſtice, whereby ſuch Conviction was con-
'firmed, ſuch Juſtice may proceed as if a
'*Procedendo* had been granted.'

'If in a Proſecution on this *Stat.* or the
'ſaid *Stat. W. & M.* a Verdict paſſes for
'the Defendant, or the Plaintiff be nonſuit-
'ed, *&c.* the Defendant ſhall have treble
'Coſts, and a like Remedy for the ſame,
'as any Defendant hath in any other Caſe in
'Law.'

'The Perſon convicted upon the *Stat.*
'3 & 4 *Will.* ſhall, before he is diſcharged
'out of Cuſtody, be bound to the Party
'grieved in 50 *l.* with Condition to be of
'good Behaviour, and not to offend in the
'like Manner; and if he refuſe to give
'ſuch Bond, he ſhall be committed to the
'Gaol till he doth; and if after ſuch Bond
'given he ſhall be again convicted for any
'Matter in that *Stat.* 3 & 4 *Will.* the Bond
'ſhall be forfeited, and the Penalty with
'Coſts ſhall be recovered in any Court at
'*Weſtminſter*, and diſtributed in the ſame
'Manner as the Forfeitures are by that Sta-
'tute; and the Party convicted ſhall be
'likewiſe liable to the Pains and Forfeitures
'in the ſaid Act.'

'If a Keeper, or other Officer of any
'Foreſt, Chaſe, Purlieu, Paddock, Wood,
'Park, or Place where *Deer* are kept, ſhall
'be convicted on the ſaid Statute, of killing

'or

or taking away any *Deer*, or of aiding or assisting therein, without the Consent of the Owner, or Person chiefly intrusted with the Custody thereof, such Keeper or other Officer shall forfeit 50*l.* for each *Deer* so killed or taken away, to be levied by Distress, *&c.* and distributed as the Forfeitures in the said Act; and for want of Distress shall be committed for three Years, and be set in the Pillory two Hours on some Market-Day, in the next adjoining Town to the Place where the Offence was committed.'

By **Stat.** 5 *Geo.* 1. *c.* 28. 'Entering into any Park, Paddock, or other inclosed Ground where *Deer* are kept, and wilfully killing any *Deer* there without Authority, or shall be aiding or assisting therein, and being indicted for the same, and convicted before a Judge of Assise, shall be sent to the Plantations for seven Years; and the Court may make an Order to transfer such Person to the Use of him who shall contract for the Performance of the Transportation.'

In the Reign of King *Geo.* 1. there sprung up a Set of desperate Villains called *Waltham Blacks*, headed by one whom they stiled King *John*, who blacking their Faces, and using other Disguises, robbed Forests, Parks and Warrens, destroyed Cattle, levied Money on their Neighbours

by

by Threats and Menaces to fire their Houſes, and committed divers other Violences and Outrages, to the great Terror of the People; therefore by Stat. 9 *Geo.* 1. *c.* 28. (made for the preventing ſuch wicked and unlawful Practices) It is enacted, 'that if any Perſons armed and diſguiſed ſhall appear in any Foreſt, Chace, Park, Paddock or Grounds incloſed where *Deer* are kept, or in any Warren or Place where Hares or Conies are kept, or in any Highway, Heath, Common or Down; or ſhall unlawfully hunt, kill, or ſteal any Red or Fallow *Deer*, or rob any Warren, or ſteal any Fiſh out of any River and Pond, or maliciouſly break down the Head of any Fiſh-Pond, whereby the Fiſh ſhall be deſtroyed or loſt, ſhall be adjudged Guilty of Felony, and ſuffer Death as a Felon without Benefit of Clergy.'

'If any Perſon ſhall be killed, or wounded ſo as to loſe an Eye or the Uſe of any Limb, in apprehending, or indeavouring to apprehend ſuch Offenders, on Proof thereof at the General Quarter-Seſſions for the County, *&c.* the Juſtices ſhall give Certificate thereof to the Perſon ſo wounded, or the Executors, *&c.* of the Party ſo killed, which ſhall intitle them to 50 *l.* to be paid by the Sheriff in thirty Days after Sight of the Certificate, on Forfeiture of 10 *l.* for which Sum ſuch

'Perſon

'Perſon may bring his Action upon the 'Caſe againſt the Sheriff.'

'Proſecutions on 3 & 4 *W.* & *M.* *c.* 10. 'to be commenced in three Years.'

'Every Offence againſt this *Stat.* may be 'tried in any County in *England*, as if the 'Fact had been there committed: But no 'Attainder for any of the Offences in this 'Act ſhall make any Corruption of Blood, 'Loſs of Dower, or Forfeiture of Lands, 'Tenements, Goods or Chattels.'

The ſaid Stat. 9 *Geo.* 1. is continued by 12 *Geo.* 1. *c.* 30. 6 *Geo.* 2. *c.* 37. and further continued by 10 *Geo.* 2. to the firſt of *September* 1744. and from thence, &c. and by a Clauſe in the ſaid Stat. 10 *Geo.* 2. 'Perſons a ſecond Time convicted, by Judg'ment or Information, of Hunting, Killing, 'Wounding or Taking away any Red or 'Fallow *Deer* out of unincloſed Foreſts or 'Chaſes, during the Continuance of the Act 'of the 9 *Geo.* 1. to be tranſported for 'ſeven Years.'

Note; The Stat. 9 *Geo.* 1. extends only to Foreſts or Chaſes incloſed; and firſt Offences in unincloſed Places are puniſhable by 3 & 4 *W.* & *M.* which inflicts only a pecuniary Penalty; and ſecond Offences by the Clauſe above; 'and Offenders are there'by ordered to be tried for ſuch ſecond 'Offence before the Juſtices of Aſſiſe, &c. 'for that Place where the ſecond Offence

'was

'was committed, and the Juſtice of the 'Peace before whom ſuch Offender was 'convicted of ſuch firſt Offence, to certify 'a true Copy of ſuch Conviction, under 'Hand and Seal, to the next Quarter-Seſſi-'ons; and the Clerk of the Peace (on Ap-'plication) to certify a Tranſcript of ſuch 'Conviction, and the ſame to be a ſufficient 'Proof of ſuch Offender's firſt Offence.'

And by another Clauſe in the ſaid Act of 10 *Geo.* 2. 'Perſons coming armed into a 'Foreſt with an Intent to ſteal *Deer*, and 'beating and wounding the Keepers, during 'the Continuance of the Act of 9 *Geo.* 1. 'to be tranſported for ſeven Years.'

By 17 *Geo.* 2. the ſaid Act of the 9 *Geo.* 2. is further continued to the 24th of *June* 1751. and from thence, *&c.* and the ſaid Clauſes in the 10 *Geo.* 2. are alſo further continued to the ſame Time.

An Information againſt *Deer-ſtealers.*

The Information of *F. F.* of, *&c.* taken by *W. H.* Eſq; one of his Majeſty's Juſtices of the Peace for the County of, *&c.* the 27th Day of, *&c.*

THIS Informant *upon his Oath ſaith, That on*, &c. *laſt paſt in the Night-time* W. P. *of*, &c. A. T. *of*, &c. *did enter into*

into the Park of T. D. *Esq; situate*, &c. *And then and there, with Harness made for that Purpose, did take and kill one fallow* Deer *of the said* T. D.*'s and when they had so killed the said* Deer, *they laid the same upon a Horse, and carried away the same to*, &c.

F. F.

A Warrant Dormant for *Deer*.

KNOW *all Men by these Presents*, That *I* P. M. *have given and granted*, And by these Presents *do give and grant unto my well beloved Friend* R. P. *one Stag and two Bucks in Summer, and one Hind and two Does in Winter, yearly, to be taken in my two Parks called* H. *and* W. *of my Gift yearly, during his Life.* And *I licence, give Authority and Power to the said* R. P. *and his sufficient Deputy, yearly, in the Season, to go into my said Parks, calling the Keeper or Keepers thereof with him, there to hunt and kill the same* Deer, *and them to bear and carry away at his Liberty and Pleasure, with such convenient Number of Persons as he shall like, for and about doing the same.* And *my further Will is, that if the said* R. P. *yearly sometimes will not come himself for the same, then I will that my Keeper or Keepers of my said two Parks for the Time being, upon Sight of a*

Bill

Bill signed with the Hand of the said R. P. *concerning the same, shall kill and deliver from Year to Year the said Summer and Winter* Deer, *without any Restraint or Gainsaying by them or any of them, in any wise to be made or done.* In Witness *whereof*, &c.

A Warrant for Coursing *Deer* in a Park.

To the Constable of, *&c.*

Somerset, } WHereas *it hath been duly proved before me, That* G. P. *of* B. *did on the 5th Day of* September *last unlawfully Course* (or as the Fact is) *one fallow* Deer *in the Park of* J. S. *of* T. *without his Consent, or Person chiefly intrusted therewith: These are therefore to require you to levy by Distress and Sale of the Goods of the said* G. P. *the Sum of* 20*l.* *which was adjudged to be forfeited by him on his Conviction before me for the said Offence, and to Pay one third Part to the Informer, another third Part to the Poor of the Parish, and the other third Part to the Owner, according to the Act of Parliament in that Case made; And for want of sufficient Distress whereon to levy the same, you are to Convey the said* G. P. *to the Gaol of* Ilchester *for the said County, to be by the Keeper thereof safely kept for the Space of twelve Months,*

and

and then to be set on the Pillory for one Hour in the next Market-Town. Given, *&c.*

No Precedent for killing *Deer*, because it is Felony, by Stat. 5 *Geo.* 1. *c.* 28. 9 *Geo.* 1. *c.* 28. 10 *Geo.* 2. *c.* 32.

A Warrant to search after Venison and *Deer*-Skins.

To the Constable of, *&c.*

Essex, to wit. } BY *Virtue of an Act of Parliament, made in the third and fourth of King* William *and Queen* Mary, *These are to authorise and require you, on Sight hereof, to enter into and search the Houses, Outhouses, (as for stolen Goods) and all other Places belonging to suspected Person or Persons, within your Precincts, to have in their Custody any Venison or Skins of* Deer, *not being lawfully qualified; and if on your Search, you shall find Venison or Skins of* Deer, *then you are presently to bring such Person or Persons, in whose Custody the same shall be found, before me or some other of his Majesty's Justices of the Peace for this County, to be proceeded against for such Offence, according to Law.* Given, *&c.*

A War-

A Warrant to levy the Penalty.

To the Conſtable of, &c.

Eſſex, to wit. } WHereas A. B. *of your Pariſh is brought before me (being one of his Majeſty's Juſtices of the Peace for this County) for having Veniſon or Skins of* Deer *in his Poſſeſſion, and upon his Examination before me he cannot give a good Account how he came by the ſame, nor produce a credible Witneſs to prove on Oath the Sale thereof; whereby he hath forfeited the Sum of* 30 l. *of lawful Money; one third Part to the Informer, another third Part to the Poor of the Pariſh where the Offence was committed, and the other Part to the Owner of the* Deer, *according to the Act of Parliament in that Caſe made: Theſe are therefore to authorize and require you, on Sight hereof, to levy the ſaid Sum of* 30 l. *by Diſtreſs and Sale of the Goods of the ſaid* A. B. *for the Uſes aforeſaid, rendring to him the Overplus; but for want of ſufficient Diſtreſs whereon to levy the ſame, you are forthwith to convey the ſaid* A. B. *to the Gaol at* ——— *for the ſaid County, to be by the Keeper thereof ſafely kept for twelve Months, and then to be ſet on the Pillory for one Hour, in the next Market-Town.* Given, &c.

An

An Indictment for hunting and taking *Deer* in the Park of *E. T.* Esq;

Essex, to wit. } THE *Jury*, &c. *That* O. D. *of* E. *in the County aforesaid, Yeoman, the third Day of* July *in the seventh Year of the Reign*, &c. *about the Hour of twelve in the Night of the same Day, gathered to himself diverse other evil disposed Persons unknown, and the Peace of our Sovereign Lord the King that now is broke, with Force and Arms*, to wit, *with Sticks, Swords, Daggers, Knives, and other Weapons, the Close and Park of* E. T. *Esq; at* A. *in the County aforesaid, unlawfully broke and entered, and the* Deer *of him the said* E. T. *then and there feeding and lying in the Park aforesaid, with two Greyhounds did hunt, and with a Buckstall which the aforesaid* O. D. *in the Park aforesaid then had and the Dogs aforesaid then and there two Does took, killed, and carried away, against the Peace*, &c. *to the great Damage of him the said* E. T. *and against the Form of the Statute*, &c.

Law Cases.

He that hath Land adjoining to a Chase, may hunt *Deer* out of his Ground with a little Dog, but not with Beagles; and by some

ſome, if the Dog follow them into the Chaſe, and the Owner beat them back, yet if they kill the *Beaſt*, Treſpaſs doth not lie. *See* 18 *H.* 6. *fo.* 21. Held, that if a Man go in the way adjoining to a Park, and his Dogs break his Leaſh and kill a *Deer* in the Park againſt his Will, and he call them back, he ſhall not be puniſhed; but it ſeems that if he do not what he can to hinder them, it ſhall be a Treſpaſs. 48 *Ed.* 3. *fol.* 8. *Kitchin* 119, 120.

If a Perſon kill another by ſhooting *Deer*, *&c.* in a third Perſon's Park, he is guilty of Manſlaughter. *Hawkins's Pleas of the Crown*, 1 *B.* 74.

The Defendant was convicted upon the Statute 13 *Car.* 2. and immediately brought a Writ of Error, and moved to be bailed till the Error was determined; but it was denied, becauſe he was in Execution for a Fine; and thereupon he was committed to the *Marſhalſea*; and there being another Indictment againſt him at the Seſſions for *Deer*-ſtealing, to which he pleaded Not guilty, it was ruled upon a Motion, that it ſhould be removed and tried in the Court of King's Bench. One *Stirt* was convicted upon the ſaid Statute, and a Warrant being made to levy the Penalty of 20 *l.* by Diſtreſs and Sale of his Goods, the Defendant, to whom the ſaid Warrant was directed, refuſed to execute it; whereupon he was indicted, which

which being removed by *Certiorari*, it was objected, that it did not appear *where the Warrant was made, or that it was made by the same Justice before whom the Party was convicted* (which is expresly required by the Statute) besides the Indictment was insufficient, it being *pro injustâ Venatione, &c.* which is not good upon this Statute without *killing the Deer:* The Indictment was quashed, *The King* against *Whitmore, Sid.* 286. *The King* against *Marshall, Sid.* 320. S. P.

A Conviction upon this Statute was removed by *Certiorari* into *B. R.* but it was moved, that it might not be filed, because if the Court should be possessed of the Cause, they cannot punish the Offender; for the Statute appoints the Execution to be by Distress and Sale, by Virtue of a Warrant made *by the Justice before whom the Party was convicted*; and because a Writ of Error doth not lie upon such a Conviction, therefore a *Procedendo* was granted. *Gawdy* against *Felton*, 1 *Keb.* 813.

The Defendant was indicted on the 3 & 4 *W. & M.* for *Deer-stealing*, and the Exception to it was, that it did not appear *in what Year, or on what Day*, the *Deer* was killed; then as to the Form of the Indictment, it was Objected that it did not appear how or in what Manner he was convicted, either by *Confession* or by *Witness*, as the *Statute* requires; but it was adjudged,

that if the *Deer* was killed within a Year before the Indictment, it was sufficient, and that the Indictment was good, though it did not appear in what Manner the Defendant was convicted. 1 *Salk.* 381.

A Person was convicted upon the *Statute* of *Deer-stealing*, and it appeared by the Conviction, that the *Deer* were not in a Park inclosed, *&c.* upon Motion in the *King's Bench* the Conviction was quashed. *Mich.* 9 *W.* 3. *The King* against *Pennoyer.*

At every Justice-Seat, the Number of *Deer* must be presented which have been given away by Warrant, and such as have died, or have been otherwise killed since the last Court. *Manwood* 104.

Convictions (two or more) of *Deer-stealing* before Justices of the Peace upon Stat. 3 & 4 *W.* & *M. c.* 10. were removed by *Certiorari* into *B. R.* and Exceptions being taken, the Question was, whether upon the said Statute Justices of the Peace might convict the Offender in his Absence, upon his Default to appear, being duly summoned. The whole Court (upon great Consideration) of Opinion, that the Convictions were good Convictions, tho' taken in the Absence of the Party. *Queen* and *Simpson*, *B. R. Lucas* 378.

Certiorari to remove a Conviction for *Deer-stealing*; it was objected, that the *Conviction* appeared to be a Year after the Day when the Information was exhibited; but adjudged,

ed, that if the Information is profecuted within a Year after the Fact, 'tis well enough, becauſe it is a good Commencement of the Suit, and 'tis from the Day of the Information, and not from the Conviction, that the Time in ſuch Caſes is to be computed.

Then it was objected, that the Diſtribution of the Forfeiture ought to have been made by the Judgment, (*viz.*) ten Pounds to the Informer, ten Pounds to the Party grieved, and ten Pounds to the Poor, *&c.* but here it was, that the Defendant *convictus eſt & forisfaciat ſummam* 30 l. *juxta formam ſtatuti* [*is convicted and hath forfeited the Sum of* 30 l. *according to the Form of the Statute*;] but adjudged, that the Judgment in ſuch Caſes ſeldom or never makes any Diſtribution, becauſe it is only conditional; for if the Offender hath not Goods to be diſtrained, he cannot forfeit, but muſt be puniſhed in another Manner. *The Queen* againſt *Barret*, 1 *Salk.* 383.

The Defendant was convicted upon the *Statute* 3 & 4 *W.* by a Juſtice, who entered into a Glover's Houſe, and finding a *Deer-Skin* there aſked him how he came by it, who anſwered, that he bought it of *T. S.* who not giving a good Account of himſelf, he the ſaid *T. S.* was convicted; and adjudged, that the Juſtice might enter and convict the ſaid *T. S.* who ſold it. *The Queen* againſt *Jennings*, 1 *Salk.* 383.

Two Persons were convicted upon the said Statute for *Deer-stealing*, and Judgment was given, that each of them should forfeit 30*l.* and this being removed into *B. R.* it was insisted, that this being but one Offence, there ought to be but one Forfeiture, *viz.* 30*l.* and no more; but adjudged, that the Forfeiture is not in Nature of Satisfaction to the Party grieved, but a Punishment of the Offender, and Crimes are several, though Debts are joint. *Partridge* against *Nailour*, *Cro. Eliz.* 480. *The Queen* against *King*, *Noy* 60. S. C. *Moor* 453. S. C.

The Question was, whether he, who *lent Dogs* to another to course *Deer*, was *aiding and assisting in the Hunting*; and by the Opinion of the three Judges he was; but *Holt* Chief Justice was of a contrary Opinion; for this being a Question upon a penal Law, which ought to be construed strictly, then he who *lent the Dogs* could not be *assisting in the Act of Hunting*, and so not within the Words of the Statute, which are *aiding and assisting* therein; now he was not assisting *therein*, though by lending his Dogs he might be assisting *thereunto*.

A Conviction for *Deer-stealing* was removed into *B. R.* and there it was confirmed; and upon a *Levari facias* directed to the Sheriff, he levied the 30*l.* Forfeiture by Sale of the Goods; and adjudged, that the Sale was good, because the Court being possessed

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ſeſſed of the Cauſe, the Record could not be ſent back again to the Juſtices; and as they have Power to confirm the Conviction, by Conſequence they have Power to award Execution, which muſt be by the Sheriff, who is the Officer of the Court, and not by the Conſtable; and it muſt be by *Levari facias*, becauſe the Words of the Statute are, that the Offender ſhall forfeit, *&c.* to be levied by Diſtreſs and Sale, *&c.* and where the Law gives a Diſtreſs for a publick Benefit, the Officer may ſell. *The King* againſt *Speed*, 1 *Salk.* 379. See *Certiorari*.

He who ſteals tame *Deer*, knowing them to be tame, is guilty of Felony. 2 *Inſt.* 201.

At a Juſtice-Seat for the Foreſt of *Windſor* one *Newſham* was convicted, and fined 5*l.* for concealing the killing a Stag by another Perſon. *W. Jones* 275.

Deer-feld, A Park or *Deer-fold.* Stabulum.

Deer-hays, Are great Nets made of Cords to catch *Deer*.

By **Stat.** 19 *H.* 7. *c.* 11. 'None ſhall keep any *Deer-hays* or Buckſtalls, ſave in his own Foreſt or Park, in Pain to forfeit for every Month 40*s.* Any two Juſtices of Peace in Seſſions may examine the Offenders, and commit them to Priſon till they have ſatisfied the Forfeiture, whereof the ſaid Juſtices are to have the tenth Part.'

Deer. The Names of Places beginning with this Word, ſignify that formerly wild Beaſts herded there; it comes from the Sax. *Deor*, *Fera*.

Deſcription. Exception was taken to an Indictment of Treſpaſs for entering into his Cloſe, called *South-Kelſey* Warren, and killing two Conies, Price 10 *d.* againſt the Form of the Statute; and it was quaſhed, becauſe this is but a *Deſcription* of the Place, and no poſitive Affirmation that it is a Warren. 2 *Keb.* 389. *The King* againſt *Smith.*

Diſforeſt, Is to diſplant or cut down the Trees of a Foreſt.

Diſpark. A *modus decimandi* for a Park; Preſcription for two a Year, and a Shoulder of every third Deer killed in the Park, in Conſideration of all Tithes in the ſaid Park. The Defendant denied the Preſcription, and pleaded, That the Park is *Diſparked*, and turned into arable Land. *By the Court*, It yet remains a Park *in Form*, and the *Diſparking* the Park of the Deer was not any *Diſparking* of the Park, ſo as to take away the Preſcription; but if a Man doth pull down his Park-Pales, the ſame is a *Diſparking* without any Seiſure of the Liberty into the King's Hands, by a *Quo Warranto*. *Hob.* 39. *Godb.* 237.

If a Man grants the Cuſtody of his Park, he may nevertheleſs *Diſpark* it; but if he Leaſe his Park he may not *Diſpark* it. *Dyer* 17. The

The King may *diſpark* his Park, and by his *Diſparking* the Office of Keeper is gone; but if there be an annual Fee, that remains, be he diſcharged, or the Park *diſparked*. *Hutton* 87. *Sir Charles Howard*'s Caſe, 1 *Cro.* 59.

Diſtreſs. If any of the Officers of the Foreſt, or others, who ought to appear at the Court of *Swainmote*, make Default, the ſame ſhall be inrolled in the Rolls of the Court, and the Defaulters ſhall be amerced, for which Amerciament, the chief Warden of the Foreſt, his Lieutenant, or the Beadle, may *diſtrain* on any Lands within the Foreſt. *Manwood* 99, 100.

If no *Diſtreſs* can be found in the Foreſt, it ought to be certified by the proper Officer to the chief Juſtice in Eyre, and upon a *Teſtatum* there, that ſuch a Perſon, who ought to appear, did make Default, and was amerced for the ſame, and that he had not any Goods or Lands in the Foreſt that he might be diſtrained, but that he hath Lands out of the Foreſt, and in ſuch County; then the Juſtices of the Foreſt may cauſe a Precept to be directed to the Sheriff of the County out of the Foreſt, to levy the Amerciament. *Manwood* 101. *Hesket* 37.

If the Officer coming to *Diſtrain*, is prevented by the Owner of the Cattle, by conveying them out of the Foreſt, or otherwiſe; in ſuch Caſe, though the Officer freſhly purſue

sue them, yet he cannot lawfully take them, being out of the Bounds of the Forest; but if such Cattle had once been *distrained* for the Amerciament, and then the Owner had by Force taken them away, and driven them out of the Forest, in such Case he may *retake* them in any Place out of the Forest. *Manwood* 101.

Doe, Is the second Beast of the Chase, and is called the first Year a *Fawn*, 2d a *Pricket's Sister*, 3d a *Doe*. The Season begins on *Holy-Rood-Day*, and lasteth till *Candlemas*.

Dogs. The Laws of the Forest do so much regard the necessary Use of *Dogs*, for the Safety of Mens Goods and Houses who live within the Boundaries, that certain *Dogs* are suffered to be kept therein by any Person whatsoever: But some Sorts are not suffered to be kept there, but only by particular Men. *Manwood* 107.

Mastiffs expeditated, and *little Dogs*, may be kept in a Forest; but no other *Dogs* without a good Claim; as for *Greyhounds*, it was unlawful to keep them, from the very beginning of the Forest-Laws, they being prohibited by the 31st of the Laws of *Canutus*. *Manwood* 110, 111, 401.

By the *Assizes and Customs of the Forest*, *Artic.* 17. 'Of these which claim to have 'Privileges, as *Dogs* unlawed, and *Grey-* 'hounds, within the Bounds of the *Forest*, 'there

'there shall be nothing done to them without our Lord the King's Warrant, or his 'Justices.' By which it appeareth, That 'he who hath a lawful Claim, by good Title, may keep *Mastiffs*, in a Forest, *unexpeditated*, and *Greyhounds* also; but such a Claim must be by Virtue of a Grant from the King, rather than by Prescription: But *Quære*. *Manwood* 110, 411.

By **Stat.** 23 *Eliz. c.* 10. 'None shall hawk or hunt with his *Spaniels* in standing 'Grain, or before it is Shocked (Except in 'his own Ground, or with the Owner's 'Consent) in Pain to Forfeit 40*s.* to the 'Owner of the same Ground, to be recovered as mentioned in this *Statute* under Title *Pheasants*.

By **Stat.** 5 *Ann. Sess.* 2. *c.* 14. 'If any Person not qualified shall keep or use any *Greyhound*, *Lurcher*, *Setting-Dog* or *Tumbler*, or any Engine to destroy Game, and shall be thereof convicted by a Justice of Peace where the Offence is committed, he shall forfeit 5*l.* one Half to the Informer, the other to the Poor of the Parish; to be levied by Distress and Sale of Goods by the Warrant of the Justice before whom convicted; and for want of such Distress, to be sent to the House of Correction for three Months for the first Offence, and every other Offence four Months.'

Queen and *Green*, *Easter* 13 *Ann.* The Defendant was convicted by two Justices (one sufficient) on this Stat. and committed for want of *Distress*, till delivered by due Course of Law; this makes the Commitment void; for the Time of Imprisonment is directed by the Act, and it ought to have been for that Space of Time, and not a General Conclusion, therefore quashed.

By **Stat.** 5 *Geo.* 1. *c.* 11. 'If any Person not qualified by Law, or not truly and properly a Servant of the Lord or Lady of a Manor, or not immediately appointed to kill the Game for their sole Use, under Colour of any Deputation from any Lord or Lady, shall keep or use any *Greyhounds*, *Setting-Dogs* or *Lurchers*, to kill and destroy the Game, he shall incur such Pains and Forfeitures, as by the Statute 5 *Annæ* last mentioned.'

N. B. *There are several other* Statutes *relating to* Dogs; *but they not properly coming under this Head, I therefore refer the Reader to the* Table.

A Declaration for keeping and using *Grey-hounds*, not being qualified.

Somerset, to wit. WIlliam Brooks, *Esq*; *who as well for himself, as the Poor of the Parish of* T. *in the said County, in this Behalf*

Behalf profecutes, Complains of Johnſon Trevor *in the Cuſtody of the Marſhal of the* Marſhalſea *of the Lord the King, before the King himſelf, of a Plea, that he render to him and to the ſaid Poor of the ſaid Pariſh of* T. *five Pounds, which to the ſaid* William *and to the Poor of the ſaid Pariſh he owes, and unjuſtly detains; for that,* to wit, *that whereas the ſaid* Johnſon *21ſt Day of* September *in the ſixth Year of the Reign of the ſaid Lord* George *the Second, now King of* Great Britain, *and ſo forth, at the ſaid Pariſh of* T. *in the County aforeſaid, uſed two* Grey-hounds *to kill and deſtroy Game, againſt the Statute in that Caſe lately made and provided; he the ſaid* Johnſon, *by Force of the Laws of this Realm, not being qualified ſo to do; by which, and by Force of the Statute in that Caſe lately made and provided, the ſaid* Johnſon *forfeited the ſaid Sum of five Pounds, and by Force of the Statute in that Caſe lately made and provided, the Action accrued to the ſaid* William, *as well for himſelf, as for the ſaid Poor of the ſaid Pariſh of* T. *in the County aforeſaid, to have and receive from the ſaid* Johnſon *the aforeſaid five Pounds: Yet the ſaid* Johnſon, *although often requeſted, the ſaid five Pounds to the ſaid* William, *who as well, and ſo forth, hath not rendred, but the ſame to the ſaid* William, *who as well, and ſo forth, to render hath hitherto altogether refuſed, and ſtill doth refuſe; wherefore the ſaid* William,

who as well, and so forth, saith he is prejudiced, and hath Damage to the Value of ten Pounds; And for that, as well for himself, as for the said Poor of the Parish of T. *he brings his Suit.*

A Licence to hunt, &c. and to seise Dogs, &c.

TO all *Christian People to whom this present Writing shall come,* I H. H. *of,* &c. *Lord of the Manor of* H. *send Greeting:* **Know ye,** *That I the said* H. H. *have given and granted,* **And** *do hereby give and grant, unto* W. P. *of,* &c. *full Liberty and Authority to hunt at all seasonable Times hereafter, for the Space of five Years next insuing, within the said Manor of* H. *in the County aforesaid, and upon the Lands and within the Limits thereof, in the same Manner as I myself might or could do, without any Let, Denial or Disturbance whatsoever:* **Giving likewise** *hereby full Power and Authority to the said* W. P. *and his Assigns, from Time to Time during the said Term, to seize all* Spaniels *and* Dogs *whatsoever, of any Person or Persons who are prohibited by the Laws or Statutes of this Realm to keep the same, and who shall during the Term abovementioned hunt within the said Manor without his Consent, and the said* Dogs *to keep and detain*

to

to and for my Use. Given *under my Hand and Seal*, &c.

A Warrant to a Game-keeper, or any other Person, to search for *Dogs*.

(See *Hare*) on 22 & 23 *Car.* 2. *c.* 25.

To the Constable of, &c. and to *W. P.* of, &c. in the County, &c. Yeoman.

Somerset, } THese are *to require you, or* to wit. } *either of you, to search in the Day-time the Houses, Outhouses or Places of any Person or Persons within*, &c. *whom you shall have just Occasion to suspect, or be informed to keep Setting-Dogs, Grey-hounds, Lurchers, Tumblers, or other* Dogs, *to destroy Partridges, Hares or Conies, not being qualified by Law to keep the same; and the* Dogs, *which you shall find in the Possession of such Person or Persons, to seise and keep to and for the Use of the Lord of the Manor where they shall be taken:* But *you are not to search the House of any Person who hath an Estate of* 100*l. a Year, a Lease for any long Term of Years of the clear yearly Value of* 150*l. or of him who is Son and Heir apparent of an Esquire, or any Person of higher Degree, or of those who are Keepers or Owners of Forests, Chases, Parks or Warrens;* And *you are to certify me with all convenient Speed what you do in the Premisses.* Given, &c.

Law

Law Case.

In Treſpaſs the Plaintiff declared, that he was poſſeſſed of a *Greyhound ut de bonis ſuis propriis* [*as of his own proper Goods*]; and that on ſuch a Day he loſt it, and that afterwards, in Conſideration thereof, the Defendant promiſed to deliver the ſaid *Greyhound* to the Plaintiff; and upon a Demurrer to this Declaration, it was objected that this Action would not lie, for the *Dog* being out of the Poſſeſſion of the Plaintiff, he had no Property in him, becauſe he was *feræ naturæ* [*of a wild Nature*] and that by a Grant of *omnia bona & catalla* [*of all Goods and Chattels*] a Dog will not paſs. *Incledon* againſt *Higgins*, 3 *Leon.* 219. *Cro. El.* 125. S. C. *Owen* 93. *Hetly* 80.

But *Quære*, for 'tis every Day's Experience, that he is *domitæ naturæ*; a Beaſt brought up and tamed by the Induſtry of Man, which is ſo univerſally known, that the Plaintiff need not aver in his Declaration that the *Dog* was tame, becauſe it ſhall be ſo intended, and it being a Beaſt of Uſe to catch the Game, for thoſe who are qualified to keep them; and therefore the Law regards it, as it doth many other *Dogs*, of which there are four Sorts, (*viz.*) *a Maſtiff*, *a Hound*, which comprehends a *Greyhound*, a *Spaniel* and a *Tumbler*; and *Tanfield* (who was afterwards

terwards Chief Baron) in arguing this Case tells us, that he had seen a Precedent *Anno* 13 *H.* 7. *Rot.* 35. where in an Action of Assault and Battery, the Defendant justified that *T. S.* was possessed of a Dog *ut de bonis suis propriis*, and delivered it him to keep, and that the Plaintiff would have taken it from him (the Defendant); and thereupon he resisted him (the Plaintiff) and beat him in Defence of the *Dog*, *&c.* and that that Hurt was of his own Wrong; and that upon a Demurrer to this Plea the Defendant had Judgment; which shews, that a Man may have a Property in a *Dog*, when 'tis lawful for him to justify the Beating another Man in Defence of it. *Dyer* 306.

In Trespass the Plaintiff declared, that *T. S. Vi & Armis*, at such a Place and in such a Year, took and lead away *an Hound*; and upon a Demurrer to the Declaration, it was adjudged that the Action did lie. *Edwards* against *Ingleton*, *Hob.* 283.

Trespass was brought for taking away a *Blood-hound*; upon not guilty pleaded, the Plaintiff had a Verdict, and 10*l.* Damages. *Cro. Eliz.* 125, 126.

Trover was brought for a *Spaniel Dog*; and upon a Demurrer to the Declaration it was held, that the Action was well brought. *Pells* against *Lemon*, *Hob.* 363.

Trespass for taking away a *Grey-hound*; the Defendant pleaded, that the *Dog* was coursing

courſing a Hare on his (the Defendant's) Lands, and thereupon he took and led him away; and upon a Demurrer to this Plea it was held frivolous; which ſhews that Treſpaſs will lie for taking a *Greyhound*; and in this Caſe it was the Opinion of the Court, that an Action of Treſpaſs will lie for killing a *Maſtiff*. *Athill* againſt *Corbett*, 2 *Cro.* 463.

Treſpaſs was brought againſt the Defendant for killing *two Greyhounds*; who juſtified, for that the *Greyhounds* did chaſe a *Deer* in his (the Defendant's) Park, whereupon to prevent further Miſchief he killed them; the Plaintiff replied, that the *Deer* was out of the Defendant's Park, and upon his (the Plaintiff's) Lands, and that he let looſe the *Greyhounds* at the *Deer* to chaſe him off his Lands, and that the *Greyhounds* purſued the *Deer* into the Park, and there killed him; and upon a Demurrer to this Replication, it was held ill; becauſe the Plaintiff did not ſet forth, that he indeavoured to ſtop the *Dogs* before they came into the Park; but then it was inſiſted that the Plea was naught, becauſe though it was unlawful to chaſe a *Deer* in the Defendant's Park, yet he could not juſtify the Killing the *Dog*; but adjudged that he might. *Barrington* againſt *Turner*, 3 *Lev.* 28.

In *Treſpaſs* the Plaintiff declared, that the Defendant beat and killed his (the Plaintiff's)

tiff's) *Mastiff*, &c. the Defendant pleaded in Bar, that the Plaintiff suffered his *Mastiff* to go in the Street without a *Muzzel*; and thereupon he ran upon another *Dog* of one *Ellen Bagshaw*, which he did bite, (which *Dog* was kept by the said *Ellen* for the better Security of her House), and that the Defendant as her Servant *killed the Mastiff* lest he should do any further Damage; and upon a Demurrer to this Plea it was adjudged ill, because a *Mastiff* is a valuable *Dog*, and therefore the Defendant could not justify killing it without a reasonable Cause; 'tis true he might justify the Beating it to prevent farther Mischief, but not to *kill it*, unless it could not be otherwise prevented; but by this Plea it doth not appear but that the Defendant might have saved his Mistress's *Dog* without killing the Mastiff; and that was the Case of *Wadhurst Damm*, where the Defendant justified the Killing a *Mastiff*, because he could not be otherwise prevented from doing Damage in the Warren. *Wright* against *Ramscot*, 1 *Sand.* 84. *Sid.* 336. S. C. *Lev.* 216. S. C. 3 *Salk.* 139.

Trover, &c. and amongst other Things *de sex Catulis*; after a Verdict for the Plaintiff, upon Not guilty pleaded, it was moved in Arrest of Judgment, that *Catulis* signified *Whelps* of any *Species*, as of *Foxes*, *Bears*, &c. but adjudged, that it shall be intended *Dog-Whelps*; and that a Man may have a

Property

Property in a *Dog*. 3 *Lev.* 326. *Chambers* againſt *Warkhouſe*.

The Defendant ſold a *Lurcher* to the Plaintiff, who promiſed to redeliver him to the Plaintiff, as often as he ſhould return to the Defendant, which he had not done; and it was held that the Action was well brought. *Elliot* againſt *Richardſon*, 1 *Keb.* 608.

In an Action on the Caſe the Plaintiff declared, that the Defendant in ſuch a Pariſh *knowingly did keep a Dog*, which uſually did bite Men; upon Not guilty pleaded the Plaintiff had a Verdict, and 100*l.* Damages; and it was moved in Arreſt of Judgment, that the Declaration was ill, becauſe the Plaintiff did not ſet forth, that the Defendant did know the *Dog* was accuſtomed to worry Men; for the Word *Knowingly* in this Declaration muſt relate to the Keeping the *Dog*; and ſo is the Caſe of *Kinion* and *Davis*, *Cro. Car.* 350, 487. in Point, which is very true; but the Rule in that Caſe was made without any Debate of the Point; and it was, that the Defendant ſhould have Judgment, unleſs Cauſe, *&c.* ſo that it might be the Negligence of the Plaintiff in that Caſe that the Rule did ſtand; therefore in the principal Caſe there was a contrary Judgment, and that it would be impertinent, that the Word *Knowingly* ſhould only relate *to the Keeping the Dog*, becauſe he who keeps a *Dog* muſt know that he keeps it:

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The Judgment was affirmed. *Cropper* againſt *Matthews*, *Sid.* 127.

Caſe, *&c.* againſt the Defendant for keeping a Maſtiff, *knowing* the *Dog* was accuſtomed to *bite Hogs*; upon a Demurrer to the Declaration it was adjudged, that this Action would not lie, becauſe 'tis not only common, but in many Caſes neceſſary, for *Dogs* to *bite Hogs*; and therefore not like the Caſe where an Action is brought for keeping a *Dog*, which uſually did bite Sheep. *Dyer* 25.

The Defendant was convicted upon **Stat. 5 *Ann.*** for keeping a *Grey-hound, and killing four Hares*, not being qualified, *which Conviction was upon his own Confeſſion*; now by the ſaid Statute the Forfeiture of 5*l.* relates to the Conviction, ſo that if 'tis not made according to the Statute, nothing is forfeited; now it was inſiſted that the Conviction in this Caſe was not according to the Statute, becauſe that directs it ſhould be *by the Oath of one credible Witneſs before one Juſtice*, but here it was *by his own Confeſſion*; beſides the Juſtice, before whom the Party was convicted, having no Power but what he derives from the Statute, for that Reaſon it ought to be purſued; but adjudged, that the *Confeſſion of the Offender* is the ſtrongeſt Evidence againſt himſelf; and though 'tis not within the Letter, yet 'tis within the Reaſon and Meaning of the Statute; therefore where the

the Conviction is upon a ſtronger Evidence than required by the Statute, it muſt be good. *The King* againſt *Gage*, 9 *G. B. R.*

Queen and *Cobbold*, *Mich.* 12 *Ann.* Defendant was convicted upon 5 *Ann. c.* 14. for keeping a *Greyhound*, not being qualified. Objection, that the Conviction was upon the ſingle Teſtimony of the Informer; *Per Cur.* 'tis a fatal Objection; for ſhould the Informer be allowed to be a ſufficient Evidence, it would induce profligate Perſons to commit Perjury for the ſake of the Reward, more eſpecially ſince they cannot be convicted of it; when the Statute ſays a Credible Witneſs, 'tis ſuch a one as is allowed *per Legem.*

In *Treſpaſs* the Defendant pleaded, that the Plaintiff's Sheep were in his (the Defendant's) Ground, and that he chaſed them from thence with his *Dog*, which purſued them into the Plaintiff's Ground adjoining, and that he immediately chid his *Dog*, *quæ eſt eadem tranſgreſſio*, *&c.* [*which is the ſame Treſpaſs*]; and upon a Demurrer to this Plea, it was objected, that though 'tis lawful to chaſe Cattle out of his Ground with a *Dog*; yet he ought not to exceed that Authority which he hath by Law, (*viz.*) (to purſue them into another Man's Ground), for if he doth, 'tis void in all; but adjudged, that the Plea was good, for 'tis the Nature of a *Dog* not to be ruled on a ſudden; there-

fore

fore the Defendant had not abused that Authority, which he lawfully had. - *Miller* against *Cowdry*, *Poph.* 161.

In an Action of Debt, upon the Statute 5 *Ann.* for keeping and using a *Dog* to kill the Game, it is necessary to shew what sort of *Dog* it was; for a *Mastiff-Dog* or a *Lap-Dog* may chance to kill Game, and the Statute mentions only *Greyhounds*, *Setting-Dogs* and *Lurchers*. See *Table*.

Dove and **Dove-cote.** There are several *Statutes* made for the Preservation of *Doves*; *and are inserted under other Heads, for which see the* Table.

A Declaration for taking *Doves*.

Huntingdon, to wit. T. M. *Complains of* E. F. *in the Custody of the Marshal, and so forth, for that he the said* E. *with Force and Arms, the third Day of* September *in the 7th Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *the Close and House of him the said* T. *at* G. *in the said County, did break, and then and there* 144 Doves *of the* Dove-cote *of him the said* T. *with Nets and other Engines did take, to the Value of* 50 l. *by which Taking he the said* T. *his Flight of his* Doves *aforesaid wholly lost, and other Enormities to him did, against the Peace of the said Lord*

the now King, and to the Damage of the said T. *ten Pounds; and therefore he brings his Suit.*

An Indictment for erecting a *Dovecote.*

Huntingdon, to wit. } THE Jury, &c. *That* A. B. *of* G. *in the said County of* H. *Yeoman, not being Lord of the Manor of* G. *aforesaid, nor Rector of the Parish Church of* G. *aforesaid* (such a Day and Year, &c.) *at* G. *aforesaid in the County aforesaid, a* Dove-cote *did Erect or cause to be Erected, to the common Nusance of the Subjects of our said Lord the King, and also against the Peace of our said Lord the King, his Crown and Dignity.*

Law Cases.

A Freeholder erected a *Dove-cote* on his Freehold Land, where there was none before, and stored it with *Pigeons*; this was *presented at the Leet for a Nusance*, and the Defendant was ordered to remove it by such a Day; which not being done, he was amerced to 20*s.* and the Lord of the Leet distrained for the same.

And first, The Court doubted whether this could be presented as a *Nusance*; and my

my Lord *Coke*, who was now Chief Juſtice, ſaid that there was no Reaſon why a Lord of a Manor ſhould have a *Dove-cote* more than another Freeholder; and it being inſiſted, that this is an Offence *puniſhable in the Leet*; becauſe by **Stat.** 18 *Ed.* 2. reciting the Articles of the Charge at a Leet, it appears, that one of thoſe Articles is to make Inquiry of *Dove-cotes* erected without *Licence*; my Lord *Coke* thereupon aſked a very material Queſtion, (*viz.*) *who ſhall give ſuch Licence?* the Lord of the Manor cannot; for if 'tis a *Nuſance*, he himſelf cannot erect a *Dove-cote*; and the King cannot, becauſe 'tis a *Nuſance*; but in the principal Caſe, the Preſentment was quaſhed, becauſe it did not ſet forth, that the Building the *Dove-cote* was *ad commune nocumentum Ligeorum Domini Regis*, [*to the common Nuſance to his Majeſty's Liege Subjects*]. *Pratt* againſt *Sterne*, 2 *Cro.* 382. *Godb.* 259. S. C.

In *Treſpaſs* upon a Demurrer the Caſe was, The Plaintiff being a Freeholder within the Manor of *Iſleworth in Middleſex*, erected a *Dove-cote* on his own Lands, and ſtored it with *Pigeons*, and ſuffered them to fly out, which was preſented at the Leet as a common Nuſance, and a Pain of 10 *l.* was impoſed on him, if he did not remove it before ſuch a Day; which not being done, it was preſented at the next Court, and the Pain thus impoſed was affeered to 8 *l.* and for Non-

Non-payment thereof a Diſtreſs was made on his Goods and Chattels; whereupon he gave Bond for the Payment of the Money, and afterwards brought an Action of Treſpaſs for taking and detaining his Cattle, till he entered into the ſaid Bond; the Defendant pleaded ſpecially, and ſet forth all the Matter before-mentioned; to which Plea the Plaintiff demurred; and it was adjudged by the whole Court, that the Erecting a *Dove-houſe* by a Freeholder on his own Land, and ſtoring it with *Pigeons*, is *not a Nuſance inquirable in a Leet*, becauſe 'tis not a common Nuſance to all People; for if 'tis any Nuſance, 'tis only ſo to thoſe whoſe Corn they eat; beſides a Man hath *jus proprietatis & privilegii* in *Pigeons*, and both in reſpect to the Place where they are, (*viz.*) in his *Dove-cote*. *Dewell* againſt *Sanders*, 2 *Cro.* 490. *Poph.* 141. S. C.

To ſteal *Wild-Pigeons* in a *Dove-houſe* ſhut up, or Hares or Deer in a Houſe, or even in a Park, incloſed in ſuch a Manner, that the Owner may take them whenſoever he pleaſes, without the leaſt Danger of their eſcaping, in which Caſe they are as much in his Power as Fiſh in a Pond or young *Pigeons*, or Hawks in a Neſt, *&c.* in taking of which, for the like Reaſon, it ſeems to be agreed, that Felony may be committed. *Hawk. P. C.* 1. *B.* 94.

Drifts of the Forests. The *Drifts of the Forests* are said to be when all the Cattle, as well of Commoners as of Strangers, are driven by the Officers of the Forest to some certain Pound or Place inclosed, and the End thereof is three-fold, *viz.* *1st*, to see whether those that ought to Common do Common with such Kind of Cattle as by Prescription or Grant they ought. *2dly*, If they Common with such Cattle as they ought, whether they do surcharge or no. *3dly*, If the Cattle of any Stranger be there which ought not to Common at all.

By **Stat.** 32 *H.* 8. *c.* 13. 'Forests, 'Chases, and Common Ground shall yearly 'be driven, either at *Michaelmas*, or within 'fifteen Days after, by the Keepers and 'Officers of the Forests and Common 'Grounds, on Pain of 40*s.* who have also 'Power by the Statute to drive them at 'any other Time in the Year, as they shall 'think fit; and the Owners of those Grounds 'have the like Power.'

Lord *Coke* makes the following Observations on this Act: That if the Forest is in the King's Hands, the *Drift* must be made by all the King's Officers of Attendance in the Forest, and by four Men and the Reeve of every Town within the Forest. If in a Subject's Hand, then by the Owner or Possessors, or by the Constable, *&c.* And likewise

wise in this Statute the Purlieus are included. 4 *Inst.* 309.

Duck. See **Pheasant, Wild-Duck.**

Eggs. By **Stat.** 11 *Hen.* 7. *c.* 17. 'None shall take out of the Nest any *Eggs* 'of Falcon, Goshawk, Lanner, or Swan, 'in Pain of a Year and a Day's Imprison-'ment, and to incur a Fine at the King's 'Pleasure, to be divided between the King 'and the Owner of the Ground, where the '*Eggs* shall be so taken'.

By **Stat.** 25 *Hen.* 8. *c.* 11. 'None shall 'destroy or take away the *Eggs* of any Wild-'Fowl, in Pain to forfeit for every *Egg* of 'a Crane or Bustard so taken or destroyed, '20 *d.* of a Bittern, Heron or Shovelard '8 *d.* and of a Mallard, Teal, or other Wild-'Fowl 1 *d.* to be divided betwixt the King 'and the Prosecutor: And the Justices of 'the Peace have Power to determine the 'Offences.'

By **Stat.** 5 *Eliz.* *c.* 21. 'None shall 'take any Hawks *Eggs*, in Pain to suffer 'three Months Imprisonment, and to be 'bound with good Sureties to his good Be-'haviour for seven Years after.'

By **Stat.** 1 *Jac.* 1. *c.* 27. 'Every Per-'son convicted by his own Confession, or 'by two Witnesses upon Oath before two 'or more Justices of Peace, to have taken

'or

'or destroyed the *Eggs* of Pheasants, Partridges or Swans, shall be committed to 'Prison without Bail for three Months, unless he immediately pay to the Use of the 'Poor where the Offence is committed, or 'he apprehended, 20*s.* for every *Egg*; and 'after one Month's Commitment, shall before two or more Justices of Peace be 'bound with two sufficient Sureties in 20*l.* 'apiece, with Condition never to offend in 'the like again.'

A Warrant against a Person for Destroying of Pheasants *Eggs*.

(On 1 *Jac.* 1. *cap.* 27.)

To *A. B.* the Constable of, *&c.*

Whereas *it hath been this Day duly proved before us* W. T. *and* J. F. *Esquires, two of his Majesty's Justices of the Peace of the County of* H. *That* A. J. *of* D. *in*, &c. *on or about*, &c. *last past did take away from and destroy three Pheasants* Eggs *in a Nest at* H. *contrary to an Act of Parliament in that Case made and provided:* **These** *are therefore in his Majesty's Name to command you to apprehend the said* A. J. *and to convey him to the common Gaol of*, &c. *there to be kept safely by the Keeper of the same, for the Space of three Months; except he forthwith pay to the Church-wardens of the Parish*

of D. *for the Use of the Poor there, the Sum of* 60s. *according to the Direction of the Statute in that Behalf made and provided.* Given *under*, &c. *See* Table.

Ejectment. See *Table.*

Esbancatura, Cutting of Branches or Boughs in a Forest.

Estovers, Signifies to supply with Necessaries; every Man may take *Estovers* in his own Woods by the View of the Foresters, and not otherwise; and the Foresters must not take any Thing for their View; if they do, 'tis Extortion. *W. Jones Rep.* 277.

If a Man hath *Estovers* allowed for making a Hedge, which Hedge would have lasted two Years, but is burned the first Year; in this Case, he shall not be allowed new *Estovers*; and if he take more *Estovers* than he ought at one Time, they shall be seised, and the Party fined. *Itin. Pick. fol.* 3. *Manwood* 388.

If he who hath *Estovers* in a Forest, make Hurdles of them, and sell those Hurdles, he is punishable. *Manwood* 388.

Expeditating of Dogs. The Dogs which are allowed to be kept in the Forest, must be such which are not able of themselves to hurt the Deer; or such which are disabled, by the Laws of the Forest, to hurt them; which *Disabling* or *Lawing* of Dogs, was called *Hambling* by the ancient Foresters; but

but now *Expeditating*, and it was inſtituted for the Quiet and Safety of the Wild Beaſts, and relates to every Man's Dog who lives near the Foreſt.

By Chart. Foreſtæ, *c.* 6. 'Lawing of 'Dogs ſhall be made in Foreſts from three 'Years to three Years by the View and 'Teſtimony of lawful Men, and not other-'wiſe; and he that hath not his Dog *lawed* 'ſhall be amerced 3 *s.* alſo no Ox ſhall be 'taken for *Lawing* of Dogs: And it ſhall 'be done by the uſual Aſſize, *viz.* That 'three Claws of the Forefoot be cut off by 'the Skin. Howbeit, ſuch *Lawing* ſhall 'not be but where it hath been uſed from 'the Coronation of *H.* 2.'

The Regarders of the Foreſt ſhall view all the Maſtiffs in the Foreſt whether they are *Expeditated*, and at the next Swainmote after they have made their Regard, preſent what Maſtiffs are not *Expeditated*, and who are the Owners; then the Court of Swainmote or Attachments may cauſe all thoſe Maſtiffs to be brought before them, and appoint a Perſon, with Inſtruments convenient for the Purpoſe, to *Expeditate* them according to Law; and then upon ſuch Matter of Record, the Court may award Proceſs to levy the 3 *s.* and not before. *Manwood* 114, 119.

Though the Forfeiture for keeping a Maſtiff not *Expeditated*, is no more than 3 *s.*

yet if the Dog doth hurt or kill a wild Beaſt of the Foreſt, then the Owner is to be puniſhed according to the Quality of that Offence, and above the ſaid Forfeiture. *Ibid.* 119.

By *The Aſſize and Cuſtoms of the Foreſt*, If a Maſtiff be found upon any Deer, and ſhall be *Expeditated*, he whoſe Maſtiff he is, ſhall be quit of the Deed; but if it be not *Expeditated*, the Owner of the Maſtiff ſhall be guilty, as if he had given it with his own Hands; and he ſhall be put by ſix Pledges, whoſe Names ſhall be written, and alſo what Kind of Dog it was.

If the Regarders find and preſent ſuch a Dog kept at or in the Houſe of *D. A.* in the Foreſt, he ſhall not be amerced upon this Preſentment; but if they preſent, that *D. A.* kept the Dog, this is good, and he ſhall be fined the 3*s.* *Manwood* 121.

If a Peer of the Realm, or a Biſhop, is preſented for keeping ſuch a Dog, he ſhall pay only 3*s.* and not according to his Quality; but if a Peer is preſented and indicted before the Juſtices of the Foreſt for keeping a Greyhound, and hunting with him there, in ſuch Caſe he may be amerced by the ſaid Juſtices, according to his Dignity and Eſtate. *Ibid.* 122.

In Purlieus or Places deafforeſted, a Man may keep a Maſtiff without being *Expeditated*. 4 *Inſt.* 308.

Felony. In some Cases Offenders in Forests may be guilty of *Felony*, as if a Forester hath killed a Deer, and leaves it in the Forest whilst he goes to the Lodge for a Horse, and in the mean Time another Person carries it away, this is *Felony*, and the Offender is to suffer as in other Cases of *Felony*. *Manwood* 215.

A Forester was indicted for *Feloniously* cutting down and carrying away several Trees; but the Judges would not suffer him to be arraigned for *Felony* upon that Indictment, because the Trees which are growing are annexed to the Freehold, of which a Man cannot commit *Felony*; but if they had been cut down by the Owner, and then the Forester had carried them away, this had been *Felony*. 12 *Assi. Placito* 32. *Manwood* 215.

Where *Felony* is committed in a Forest, Hue and Cry may pursue the *Felon* wheresoever he goes, as after a *Felon* at Common Law, till he is apprehended. *Manwood* 216. See the *Table*.

Fence-month. The *Fence-month*, by the ancient Foresters was called the *Defence-Month*, and is the Fawning Time; during which, Watch and Ward is kept, (since the Time of *Canutus*) to defend the wild Beasts and their young ones from Danger; and every Man is forbidden to wander up and down in the Forest, or otherwise to disquiet the Deer, and the Foresters, Verderors, Re-

garders, Agistors and Woodwards, are all to be assisting each other in such Watch and Ward, and the Verderors give a Charge, which see in *Manwood* 137. It begins fifteen Days before *Midsummer*, and ends fifteen Days after. 4 *Inst.* 313. *Manwood* 135, 136.

If any Swine, Goats or Sheep are found in the Forest in *this Month*, they are forfeited to the King. *Itin. Lancastr. fol.* 7. *Manwood* 136, 139. See the *Table*.

Ferret, Is a little Creature like a Weasel, used in catching Rabbits, for which a Replevin lies. *Cro. Jac.* 463.

Ferry. One *Blagrave* having erected a *Ferry* where there was none before, was fined 5 *l.* because the Deer by this Means may be stolen, and carried over the Water, so as no Blood-hound can follow. *W. Jones's Rep.* 273.

Fish. By **Westm.** 2. *c.* 47. 'None 'shall take *Salmon* betwixt the eighth of 'September and the eleventh of *November*, 'nor young *Salmon* with Nets or Engines, 'at Mill-pools, betwixt the Midst of *April* 'and twentieth of *June*, on Pain of having 'their Nets and Engines burnt for the 1*st* 'Offence; for the 2*d* a Quarter of a Year's 'Imprisonment; for the 3*d* a Year's, and 'after to have their Punishment increased 'according to the Trespass. And in Places 'where fresh Waters be, Overseers of this

'*Stat.*

'*Stat.* shall be assigned and Sworn to inquire 'of the Offenders.

By **Stat.** 13 *Ric.* 2. *c.* 19. 'No *Fisher* 'shall use any Engine by which the Fry 'of *Fish* may be destroyed, on the Pains 'mentioned in Statute *Westm.* 2. *c.* 47.

'*Salmon* in *Lancashire* shall not be taken 'betwixt *Michaelmas* and *Candlemas*.'

'Conservators shall be Sworn to see this 'Statute observed, and the Offenders pu-'nished.'

By **Stat.** 17 *Ric.* 2. *c.* 19. 'Justices 'of Peace shall be Conservators of the Sta-'tutes of *Westm.* 2. *c.* 47. and 13 *Ric.* 2. 'c. 19. and shall have Power to search all 'Wears, left by their Straitness the Fry of '*Fish* may be destroyed.'

'Justices of Peace shall have Power to 'appoint and swear Under-Conservators; 'the same Justices shall hear and determine 'in Sessions Offences of this Kind, and pu-'nish the Offenders by Fine and Imprison-'ment; and Half the Fine is to go to the 'Under-Conservator who informs'.

'The Mayor of *London* hath like Power in 'the *Thames* from *Staines* to *London*, and in '*Medway* as far as the Citizens Grant extends.

By **Stat.** 2 *Hen.* 6. *c.* 15. 'None 'shall fasten Trunks or other Nets over Ri-'vers to the Destruction of the Fry of *Fish*, 'and Disturbance of the common Passage 'of Vessels, in Pain to forfeit 5 *l.* to the

'King: Howbeit they may use them at seasonable Times, so they draw them as other *Fishers* do in their Nets, without fastning them. And every Man's Right of *Fishing* is saved.

By **Stat.** 1 *Eliz. c.* 17. 'None shall use any Net or Engine to destroy the Spawn or Fry of *Fish*, or take *Salmons* or *Trouts* out of Season, or *Pike* shorter than ten Inches, *Salmon* than sixteen, *Trouts* than eight, and *Barbels* than twelve; or shall use any Engine to take *Fish*, other than *Angle* or Net, or a Tramel of two Inches and an Half Mesh, on Pain to forfeit 20*s.* the *Fish* so wrongfully taken, and the Net or Engine so wrongfully used.'

'All Persons having Jurisdiction of Conservancy upon Streams of Waters, and Lords of Leets, have Power, upon the Oaths of 12 Men, to hear and determine these Offences, and shall have all the Forfeitures which accrue thereupon.'

'The Steward of a Leet shall give this Statute in Charge to the Jury, in Pain of 40*s.* to be divided betwixt the Queen and the Informer.

'If the Jury wilfully forbear to present Offences of this Kind, the Steward or Bailiff shall impanel another Jury to inquire of their Default, which being found, the first Jury shall forfeit 20*s.* apiece.

'Upon

'Upon Default of Presentment in Leets within one Year, Justices of Peace in Sessions, Justices of *Oyer* and *Terminer*, and Justices of Assize in Circuits, have Power to hear and determine the said Offences.'

'This Act shall not restrain the Taking of *Smelts*, *Loches*, *Minews*, *Bullheads*, *Gudgeons* or *Eels*, with Nets or Engines formerly used, so that no other *Fish* be taken therewith; nor shall extend to abridge any former Privilege of Conservancy lawfully injoyed, or *Fishing* in *Tweed*, *Ustse*, *Wye*, or in Waters let to Farm by the Queen, so that the Spawn or Fry of *Fish* be wilfully destroyed.'

By **Stat.** 5 *Eliz. c.* 21. 'None shall unlawfully break down *Fish-Pond* Heads, or *Fish* there, without Licence of the Owners, *&c.* in Pain to suffer three Months Imprisonment, and to be bound with good Sureties to the good Behaviour for seven Years.'

'The Party grieved shall in Sessions or elsewhere recover treble Damages against the Delinquent, and on Satisfaction shall have Liberty to procure his Release of Behaviour.'

'Justices of *Oyer* and *Terminer*, Assize, Peace and Gaol-delivery in Sessions, have Power to hear and determine these Offences.'

'Justices

'Justices of Peace upon the Offenders 'Acknowledgment in Sessions, and Satisfaction to the Party grieved, shall have 'Power to release the Behaviour.

By **Stat.** 3 *Jac.* 1. *c.* 12. 'None shall 'erect any Wear along the Shore, or in any 'Haven or Creek, or within five Miles of 'the Mouth of any Haven or Creek, or 'shall willingly destroy the Spawn or Fry 'of *Fish*; in Pain of 10 *l.* to be divided 'between the King and the Prosecutor; 'nor shall any Person *Fish* in any of the said 'Places, with any Net of a less Mesh than 'three Inches and an Half from Knot to 'Knot (except for the taking Smoulds in '*Norfolk* only) or with a Canvas Net or 'other Engine, whereby the Spawn or Fry 'of *Fish* may be destroyed, on Forfeiture 'of the said Net or Engine, whereby the 'Spawn or Fry of *Fish* may be destroyed, 'and 10 *s.* in Money, to be divided betwixt 'the Poor of the Parish and the Prosecutor, 'and to be levied in Corporations by the 'Head-Officers, and in other Places by Distress and Sale of Goods, upon a Warrant 'of a Justice of Peace, directed unto the 'Constable and Church-wardens of the same 'Parish for that Purpose.'

By **Stat.** 22 & 23 *Car.* 2. *c.* 25. 'A 'Person convicted by Confession or Oath 'of one Witness, within one Month after 'the Offence committed, before a Justice

'of

of the Peace, of taking *Fish* by any Device whatsoever, in any several Water or River, or aiding therein, shall make such Recompence, and within such Time, as the Justice shall appoint, not exceeding treble Damages, and pay down to the Overseers of the Poor such Sum as the Justice shall think meet, not exceeding 10*s.* in Default to be levied by Distress; and for Want thereof the Offender to be committed, not exceeding one Month, unless he enters into Bond with Sureties to the Party injured, not exceeding 10*l.* never to offend in like Manner; the Justice before whom convicted may destroy the Engines; and Persons aggrieved may appeal to the Quarter-Sessions, whose Order shall be final, if no Title to any Land, Royalty or Fishery be therein concerned.'

By **Stat.** 30 *Car.* 2. *c.* 9. 'None shall in the River *Severn*, Fish with, or use any Net, Engine or Device, whereby any *Salmon*, *Salmon-mart*, *Salmon-peal*, *Pike*, *Carp*, *Trout*, *Barbel*, *Chub* or *Grayling*, the Mesh whereof shall be under two Inches and an Half Square from Knot to Knot, or above twenty Yards in Length, and six in Breadth, or above fifty in Length, and six in Breadth in the Wing of the Net, in the said River from *Ripley-Lockstake* to *Glouceſter*-Bridge, or above sixty in Length below *Glouceſter*-Bridge, and six in Breadth in the Wing of

the

'the Net; or shall *Fish* with more than one 'of those Nets at once, nor shall use any 'Device for taking the Fry of *Eels*, on For- 'feiture of 5 *l.* for every Offence, with the '*Fish* so taken, and the Instruments with 'which, *&c.*'

'None between the first of *March* and 'last of *May* shall do any Act whereby the '*Spawn* of *Fish* shall be destroyed, on For- 'feiture of 40 *s.* for every Offence, and the 'Instruments.'

'The Justices of Peace in the Counties 'of *Worcester*, *Salop* and *Glocester*, shall be 'Conservators of the Rivers in their respec- 'tive Counties, and make one or more Con- 'servators in their Limits; to whom or to 'any Constable, *&c.* upon their Knowledge 'or Information of any such Offence, any 'two of them shall Issue Warrants to search 'suspected Houses, *&c.* for unlawful Instru- 'ments, to seise and bring them to the 'Quarter-Sessions to be destroyed.'

'None shall be punished for the said Of- 'fences but by Information or Indictment 'before the Justices of *Assize* and *Nisi Prius*, '*Oyer* and *Terminer*, and Gaol-delivery, or 'in the General Sessions of Peace; one 'Moiety of the Forfeiture shall be to the 'Poor of the Parish where the Offence 'shall be committed, the other to the Pro- 'secutor, to be levied by *Fieri facias* or '*Capias ad Satisfaciendum*.'

'The

'The Jurisdiction of the Lords of Leets or Franchises saved, and all Rights, &c. of the King and others in the said River.'

By **Stat.** 4 & 5 *Ann.* c. 21. 'The Acts 4 & 5 *W.* & *M.* & *Westm.* 2. [See Sect. 1.] to be duly put in Execution, and to extend to all Rivers, Creeks, &c. in the County of *Southampton* and Southern Parts of *Wiltshire*, &c. in like Manner and under the same Penalties, as are contained in the above mentioned Act, which see under **Nets.**'

'Justices residing near the Rivers shall assign Overseers of this Act, who shall inquire after Offenders against this Statute, and apprehend them and destroy their Nets, &c. every Offender to be brought before a Justice of Peace, and being convicted by the Oath of one or more Witnesses, or by his own Confession, shall forfeit for the first Offence a Sum to be ascertained by the Justice, not under 20*s.* nor above 5*l.* and for the second, not under 40*s.* nor more than 10*l.* and as the Offence shall increase, the Justice shall double the Penalty; one Half thereof to the Informer, the other to the Poor of the Parish where the Offence is committed; and if the Offender do not on Demand pay the Penalty, or be not able, the Justice shall send him to the House of Correction for three Months.'

'No

'No Person (not duly qualified) shall 'hereafter kill *Salmon*, or any other *Fish*; 'and no Person whatsoever shall take, kill, '*&c.* any *Salmon*, *Salmon-Peal*, or *Salmon-Kind*, by Hawks, Racks, Gins, *&c.* at 'any Time after *June* the thirtieth till *November* the eleventh, under the Penalties 'afore mentioned.'

'Owners of Meadow-Grounds, *&c.* to 'let *Salmon* pass out of Dikes, *&c.* into the 'Rivers and not destroy them, under the 'like Penalty.'

'Owners of Mills, *&c.* to keep open 'one Scuttle of a Foot Square in the Waste-'hatch, for *Salmon* to pass up and down, 'from the eleventh of *November* to the thirty-'first of *May* every Year, and not to use 'any Nets, *&c.* in the said Scuttle during 'the said Term, on like Penalty; and not 'to lay any Pots or Nets to catch *Eels* 'after the first of *January* to the tenth of '*March*, unless Racks be set before them, *&c.*

'No *Bouges* or *Sea-Trouts* shall be taken, 'or *Salmon* sold; after the thirtieth of *June* 'till the eleventh of *November* every Year, 'under like Penalties.'

'The Forfeitures to be levied by Distress 'and Sale of the Offender's Goods, by 'Warrant of the Justice before whom con-'victed; and for want of Distress, to be 'sent to the House of Correction: But this 'Act shall not extend to any Country or

'Place

Place in this Kingdom, save only to the County of *Southampton* and Southern Parts of *Wiltshire*.'

By **Stat.** 1 *Geo.* 1. *c.* 18. 'The Clause in the Act of 4 & 5 *Ann. c.* 21. relating to the catching of *Salmon*, &c. from the thirtieth of *June* till the eleventh of *November*, so far as relates to the Owners of *Fisheries* in the Rivers mentioned in the said Act, is repealed; And such Owners may take *Salmon*, &c. from the eleventh of *November* to the first of *August*; but no such Owner shall between the first of *August* and the eleventh of *November* following take any *Salmon* or offer the same to Sale, under the Penalties in the said Acts of 4 & 5 *Ann. c.* 21.

'Persons destroying the Fry of *Salmon* in the Rivers *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Mersey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent* and *Trent*, with Nets, Engines, &c. whereby the Spawn of *Salmon*, or any *Kepper* or *Shedder-Salmon*, or any not being eighteen Inches in Length from the Eye to the Extent of the Middle of the Tail; or who shall erect any Bank, Dam, Hedge, or Nets, cross any of the said Rivers, whereby the *Salmon* may be hindred from passing up the said Rivers to Spawn; or shall take any *Salmon* in the said Rivers between the last Day of *July* and the twelfth

'of

'of *November*, or who shall after the twelfth 'of *November fish* there for *Salmon* with 'other Nets, *&c.* than are allowed by '1 *Eliz. c.* 17. and 30 *Car.* 2. *c.* 9. being 'convicted thereof before one Justice of the 'Peace of the County where the Offence 'shall be committed, either upon View of 'such Justice, by Confession, or by one 'Witness upon Oath, shall forfeit 5 *l.* for 'every Offence, besides the *Fish* so taken, 'and the Nets, *&c.* one Half to the In-'former, the other to the Poor of the Pa-'rish where the Offence shall be committed, 'to be levied by Distress and Sale of Goods, 'rendring the Overplus, above the Charges 'of the Distress; and for want of such Di-'stress, the Offender to be committed to 'the House of Correction, or other County 'Gaol, for any Time not exceeding three 'Months, or less than one, there to be 'kept to hard Labour, and suffer such other 'corporal Punishment as the Justices shall 'think fit; the Nets, *&c.* to be forfeited, 'and the Banks, *&c.* to be removed at the 'Charge of the Offender, which if not paid 'on Conviction, to be levied as the said 5 *l.*

'Persons convicted of sending to *London* 'from any of the said Rivers, to Fish-'mongers or their Agents, or buying or 'selling any such *Salmon*, weighing less than 'six Pounds each, shall forfeit 5 *l.* and the '*Fish*; one Half of the said Sum and *Fish*

'to

'to the Informer, the other to the Poor 'where the Offence shall be committed, to 'be levied by Distress if the Sum be not 'paid on Conviction; and for want of such 'Distress the Offender shall be committed 'to the House of Correction or County 'Gaol, there to be kept to hard Labour for 'three Months, unless the Forfeiture be paid 'in the mean Time.'

'Offenders in the said Rivers punished by 'this Act, shall not be prosecuted on any 'other for the same Offence.'

'Persons aggrieved by any Judgment of 'Justices, in the Cases aforesaid, may ap-'peal to the Quarter-Sessions of the County, '*&c.* who are hereby impowered to hear 'and finally determine the same.'

'This Act shall not extend to any an-'cient Wears or Locks on any Rivers; but 'the Proprietors thereof may repair, re-'build, remove or take down any of them, 'as they might have done if this Act had 'not been made.'

By Stat. 9 *Geo.* 1. *c.* 28. Stealing *Fish* out of any River or Pond, and breaking down the Head or Mound of any *Fish* Pond, whereby the *Fish* shall be lost or destroyed, made Felony without Benefit of Clergy. Continued by 12 *Geo.* 1. and 6, 10 and 17 *Geo.* 2. to 24 *June* 1751. and from thence, *&c.*

A Warrant

A Warrant againſt a *Fiſher* for taking *Salmon* under Size, in order to convict him.

1 *Geo.* 1. *cap.* 18.

To the Conſtable of, *&c.*

WHereas *Complaint hath been made unto me by* H. W. *of*, &c. *That* C. C. *of your Pariſh hath lately killed and deſtroyed ſeveral* Salmons, *not being of the Size the Law requires*, to wit, *not eighteen Inches in Length from the Eye to the Extent of the Tail:* **Theſe** *are therefore to command you to apprehend the ſaid* C. C. *and to bring him before me or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſſes, and be dealt with according to Law.* **Given**, &c.

A Warrant to levy the Forfeiture on a *Miller* for deſtroying *Salmon.*

4 *&* 5 *Ann. cap.* 21.

WHereas *it hath been duly proved before me* J. A. *Eſq; one of his Majeſty's Juſtices of the Peace for the County of* Southampton *reſiding near the River of*, &c. *in the ſaid County, which runs into the Sea there, That* D. J. *of*, &c. *Miller, living in the Mill called*, &c. *on the River aforeſaid, hath not kept open a Hatch for the* Salmon *to paſs and*

and repass from the eleventh Day of November *to the thirty-first of* May *last, as the Statute in that Behalf directs and requires, but hath lately taken and destroyed several* Salmons *in Pots, and by other Means in the said River out of Season, contrary to Law:* **These** *are therefore to command you to demand of the said* D. J. *the Sum of* 20s. *which he hath forfeited by the Offence aforesaid; and if the said* D. J. *refuses to pay the same, that you do levy it by Distress and Sale of the Goods of the said* D. J. *and if no such Distress can be found, that you convey him to the House of Correction, there to remain for the Space of three Months, according to the Direction of the said Statute in that Case made and provided.* **Given,** &c.

A Warrant for taking Nets and *Fish.*

4 & 5 *W. & M. cap.* 23.

To the Constable of, *&c.*

to wit. ——**B***Y Virtue of an Act of Parliament in that Case made; These are to require you, on Sight hereof, (in the Day-time) to make strict Search in Houses and Outhouses of all Persons in your Parish not qualified to take* Fish *in Rivers or* Fisheries, *except navigable Rivers, and Makers and Sellers of such Nets, or Owners of* Fisheries; *and if on your Search, or you shall be informed of such Nets laid in any River or* Fishery, *then you*

you are to seise them and bring them to the Lord of the Manor, to be kept for his Use, or destroyed, as he shall think fit. Given, &c.

A Declaration in Trespas for breaking the Plaintiff's Close, and *Fishing* in his *Fishery*.

Southampton, to wit. T. P. *complains of* J. K. L. W. *and* E. J. *being in the Custody of the Marshal of the* Marshalsea *of our Sovereign Lord the King, before the King himself, for that on the nineteenth Day of* May *in the seventh Year of the Reign of our present Sovereign Lord* George *the second, and so forth, they the said* J. K. L. W. *and* E. J. *with Force and Arms broke and entered into the Close of the said* T. P. *called,* &c. *at,* &c. *in the said County of* Southampton; *and in walking in the said Close, trod down and destroyed the Grass of the said* T. P. *then and there growing, to the Value of* 40s. *And also for that afterwards, that is to say, the same Day and Year, at,* &c. *aforesaid, in the said County of* Southampton, *with Force and Arms they the said* J. K. L. W. *and* E. J. Fished *in the separate* Fishery *of the said* T. P. *in the River of,* &c. *in the,* &c. *aforesaid, and then took and carried away* Fishes *from his the said* T. P.'s *said separate* Fishery *there found, that is to say,* 1000 *Daces, and* 1000 *Gudgeons,*

geons, to the Value of 50 l. And then and there committed other Injuries against the said T. P. *against the Peace of our said Sovereign Lord the King, and to the Damage of the said* T. P. 200l. *and therefore brings his Suit*, &c.

An Indictment (at Common Law) for *Fishing* without the Consent of the Owner.

Middlesex, to wit. } THE Jury *Present*, &c. *That* D. P. *of*, &c. *in the County aforesaid, Yeoman, the third Day of* June *in the seventh Year*, &c. *with Force and Arms, the Close of* M. A. *at* A. *in the County aforesaid broke, and in the several* Fishery *of the said* D. P. *unlawfully did* fish, *and* Fish *there*, to wit, *two* Salmons *and ten* Trouts, *&c. to the Value of*, &c. *then and there took*, &c. *and carried away, and his Grass to the Value of*, &c. *there lately growing did tread down and destroy, and other Enormities to him did, against the Peace*, &c.

An Indictment for *Fishing* in a Pond.

Middlesex, to wit. THE *Jurors*, &c. *That* C. D. *of* B. *in the said County, Yeoman, on the —— Day of —— in the —— Year of the Reign*, &c. *and on divers Days and*

and Times, as well before as after the said ——*Day of*——*at* B. *aforesaid in the said County, with Force and Arms, did unlawfully fish with Nets and other Engines in a certain Pond there, being the Freehold of* E. F. *Esq; and did then and there take and carry away divers* Fish, *that is to say, fifty Trouts, fifty Carps,* &c. *against the Peace,* &c.

Taking Fish out of a Net, Trunk or Pond is Felony, becaufe they have not their natural Liberty as in Rivers. 1 *Vent.* 122.

Law Cafes.

In Trefpafs for breaking and entring his Clofe, and *fifhing* in *feparali pifcaria fua*, [*in his feparate Fifhery*] and for taking *his Fifh* there, (*viz.*) one hundred *Eels*; upon Not guilty pleaded, the Plaintiff had a Verdict, and intire Damages; but it was moved in Arreft of Judgment, that the Declaration was ill, becaufe it was for taking *his Fifh*; whereas he cannot have a Property in them, fo as to call them *his Fifh*, till they are taken, and in his Poffeffion; but adjudged, that he having fet forth, that they were taken in his *feparate Fifhery*, he hath a Property in them; for no other Perfon can enter and take them there; if it had been *extra liberam pifcariam fuam* [*out of his Free Fifhery*] the Action would not lie. *Child* againft *Greenhill*,

Greenhill, *Cro. Car.* 390, 399, 553. *March* 48. S. C.

The Question at a Trial at Bar concerning the *River of Wallfleet* was, whether *T. S.* had a Right of *Fishing* there, exclusive of all other Persons; and the *Lord Chief Justice Hale* thus distinguished;

1st. That a Lord of a Manor having the Soil of a private River, 'tis good Evidence to prove that he hath the Right of *Fishing*, exclusive of all others, and that he who will claim *free Fishing* in such a River, must prove his Right; but that where a River *ebbs* and *flows*, and is an Arm of the Sea, in such Case the *Fisking* there is common to all People; and if an Action of Trespass is brought against any Man for fishing there, 'tis a good Justification for the Defendant to plead, that the Place where the Trespass is supposed to be done, is an *Arm of the Sea*, in which every Subject of the King hath and ought to have *free Fisking*; that in the River *Severn* there are several Restraints as *Gurgites*; but that on each Side of the said River, the Soil doth belong to the respective Lords on those Sides, and they have a peculiar Sort of *Fishery*; but that the common *Fishery* belongs to all People; that the Soil of the River *Thames* is in the King, and that the Lord Mayor of *London* for the Time being is Conservator of that River, and that it is common to all Fishermen. 1 *Mod.* 105.

Trespass, *&c.* for breaking his Close, *&c.* the Defendant justified, for that the Place where the Trespass was supposed to be done is in *B.* in which Place he had a Right of *Fishing* by Prescription; and upon a Demurrer to this Plea, it was adjudged not good; because there are several Sorts of Fisheries, (*viz.*) *free Fishing*, *several Fishing*, and *common Fishing*; and he (the Defendant) did not set forth to what Kind of *Fishing* he had a Right, nor whether it was a Right as appertaining to any Manor or Messuage, but made it a mere Personal Thing by this Plea; 'tis true an *Easement* (as a Way) may be claimed without setting forth to what it appertains, and so may a *Liberty*, but an *Interest* cannot; as for Instance, a *Common* cannot, because 'tis an *Interest*, and so is a *Right of Fishing*. *Hardres* 407.

The Defendant was indicted for taking out of the Pond of *T. S.* at *H. &c.* certain *Fish*, called *Carp Fish*, *de bonis & catallis ipsius* T. S. *propriis* [*the proper Goods and Chattels of him the said* T. S.]. An Exception was taken to this Indictment, because it did not set forth how many *Fish* the Defendant did take; and for this Purpose 5 *Rep.* 34. *Playter*'s Case was cited, which was an Action of Trespass *quare clausum fregit, & pisces suos cepit* [*wherefore he broke his Close, and took his* Fish; the Plaintiff had a Verdict and intire Damages, but the Judgment was

was stayed for the *Incertainty of the Number and Nature of the Fishes taken*; but the principal Case being upon an Indictment, Damages are not to be recovered, but the Offender is to be fined at the Discretion of the Court, according to the Circumstances of the Fact, and not according to the Number of the *Fish* he took; 'tis true, in Actions of Trespass the Modern Resolutions have been according to *Playter*'s Case; as for Instance, in Trespass, *&c.* for taking his *Fish*, not setting forth *what Number, or of what Kind*; the Plaintiff had a Verdict, but could never get Judgment; for the Chief Justice *Hale* was of Opinion, that both the *Kind* and *Number* ought to be set forth; and that where the Plaintiff declares for Fishing in his *several* Fishery, and taking *Eels* there, 'tis usually said what Numbers. *The King* against *Wetwany*, 1 *Lev.* 203. 1 *Keb.* 178. S. C. 3 *Keb.* 107. *Burrage*'s Case.

The Defendants were indicted, for that they *Vi & Armis*, and without Licence and unlawfully did fish *in quadam piscinâ* of *T. S.* and took and carried away several *Fish* in the Night with Nets, against the Form of the Statute 5 *Eliz. c.* 21. It was held, that if this had been an Indictment at Common Law, it had been ill; because the Words *riotose assemblaverunt* were left out, but that it was well enough upon the Statute; however this Indictment was quashed, because of

that insensible Word *Piscina*, whereas *Piscaria* is the proper Word to express a *Fishery*. *The King* against *Marshall and others*, 2 *Keb.* 594.

Trespass, &c. for that the Defendant *with Force and Arms* on such a Day, &c. and in such a Place, did fish in his (the Plaintiff's) free *Fishery*, and did take *Fish* there, &c. upon Not guilty pleaded the Plaintiff had a Verdict; and it was moved in Arrest of Judgment, that he who had a *free Fishery* could not maintain this Action, because it was only a Freedom of *Fishing* with others, and the same as *Communis piscaria*, and that such a Grantee had only a Liberty to take *Fish*, and no Property in them till they are taken; that *libera piscaria* was not like *libera warrena*; for a Grantee of the last might maintain Trespass against any one but the Owner of the Soil, for hunting in his *free Warren*, because that is a Liberty to hunt in his own or another's Ground exclusive of others; and this Grant the King may make, who is Master of all the Game; but a *free Fishery* is only a Freedom of *fishing* with others. But *Holt Chief Justice* held there were three Sorts of *Fisheries*, (*viz.*) a *several Fishery*, and he who has such a *Fishery*, is the Owner of the Soil where the Water doth run; and therefore if *T. S.* should bring an Action, &c. for *Fishing* therein, the Defendant may plead that 'tis *liberum tenementum* of

of another; the next is *Libera piscaria*, *free Fishery*, which is where the Right of *Fishing* is granted to *T. S.* in such Case he hath the Property of the *Fish*, and may bring a possessory Action for them without making any Title; the last is *Communis piscaria*, and this is like the Case of other Commons. See *Regist.* 95. in Point. *Smith* against *Kemp*, 2 *Salk.* 637. 4 *Mod.* 355. S. C. 1 *Inst.* 122. *was denied to be Law.*

2. *Trespass*, *&c.* in which the Plaintiff declared *quare pisces suos cepit in separali piscaria*; upon Not guilty pleaded the Plaintiff had a Verdict; and now it was moved in Arrest of Judgment, that the Declaration was ill, because the Plaintiff could not declare for taking *Pisces suos*, unless they had been in a Stew or Trunk; but it was adjudged, that after a Verdict any Thing shall be intended to make the Declaration good.

Foot-geld, In *Saxon* Fot-gelban, is an Amerciament for not expeditating Dogs in the Forest.

A Man claimed to be quit of *Foot-Geld* * and produced a Grant for the same, which was allowed: But a Man cannot prescribe for the same, because such Prescription cannot have any reasonable Commencement.

* *i. e.* To keep Dogs in the Forest without being expeditated.

Aſſizes of Pickerring, *Anno* 10 *Ed.* 3. *Manwood* 109.

Foreſt, Is a certain Territory of Woody Grounds and fruitful Paſtures, privileged for Wild Beaſts and Fowls of *Foreſt*, Chaſe, and Warren, to reſt and abide there in the ſafe Protection of the King, for his Delight and Pleaſure, and is in its Nature the higheſt Franchiſe of Princely Pleaſure, comprehending a Chaſe, a Park, and a Warren; which Territory of Ground ſo privileged is meted and bounded with unmoveable Marks, Meers and Boundaries, either known by Record or Preſcription; and alſo repleniſhed with Wild-Beaſts of Venary or Chaſe, * and with great Coverts of *Vert*, for the Succour of the Beaſts there to abide; for the Preſervation and Continuance of which Place, together with the Vert and Veniſon, there are particular Officers, Laws and Privileges belonging to the ſame, requiſite for that Purpoſe, and proper only to a *Foreſt*, and to no other Place; (*All which will be inſerted under their Heads.*)

The Beaſts of the *Foreſt* frequent the Coverts in the Day-time, and feed on the Lawns,

* A Foreſt muſt be repleniſhed with wild Beaſts of Venary or Chaſe, and there muſt alſo be Vert, otherwiſe 'tis no Foreſt. *Manwood* 145, 163. And this Privilege diſtinguiſhes a Foreſt from other Places having Woods, Coverts and Fruitful Paſtures.

Lawns, Meadows and Paſture Grounds in the Night, and they are five, *to wit*, The *Hart*, the *Hind*, the *Hare*, the *Boar*, and the *Wolf*.

'Tis a general Opinion amongſt the Learned in the Law, That the King only by the Law of Nations, or Common Law, may make a *Foreſt*. *Bract. Lib.* 2. *c.* 24. *Hesket*, *fol.* 8. *Treturn*, *fol.* 5. *Manwood* 153.

The King being ſeiſed of a *Foreſt*, did grant the Foreſt to another in Fee, the Grantee ſhall have no *Foreſt*, becauſe he hath no Power to make Juſtices and Officers of the *Foreſt* to hold Courts, *&c.* but yet though it cannot take Effect by Force of the Grant as a *Foreſt*, yet the ſame ſhall paſs as a Free-Chaſe. But if the King grants a *Foreſt* to a Subject, and granteth further, that upon Requeſt made in Chancery, he and his Heirs ſhall have the Juſtice of the *Foreſt*, then the *Subject* hath a *Foreſt* in Law. 4 *Inſt.* 314.

The Oath of the Inhabitants of the *Foreſt*, being of the Age of twelve Years, was antiently uſed in theſe Old Rhymes.

You ſhall true Liege-Man be,
Unto the King's Majeſty: (*hurt do,*
Unto the Beaſts of the Foreſt *you ſhall no*
Nor to any Thing that doth belong thereunto:
The Offences of others you ſhall not Conceal,
But to the utmoſt of your Power, you ſhall them
Unto the Officers of the Foreſt, (*reveal*
Or to them who may ſee them redreſt:

All these Things you shall see done,
So help you GOD at his Holy Doom.

By **Stat.** 17 *Car.* 1. *c.* 16. 'Tis enacted, that the Metes, Limits, and Bounds of every *Forest*, shall be adjudged to extend no farther than they were commonly known or reputed to extend in the 20th Year of the Reign of King *James*; and no Place in *England* or *Wales* shall be adjudged a *Forest*, or within the Bounds of a *Forest*, where no *Justice-Seat*, *Swainmote*, or *Court of Attachments* have been held; or where no *Verderors* have been chosen, or *Regard* made within *sixty Years* before the first Year of the Reign of King *Car.* 1. but the same Place shall be disafforested, and exempted from the Laws of the *Forest*.

'Provided, That for the better ascertaining the *Metes and Bounds of the Forests*, the *Lord Chancellor, or Keeper of the Great Seal* for the Time being, shall upon Request of any of the Peers, or Knights of Shires, or Burgesses of Parliament, grant Commissions under the Great Seal to Commissioners, to be nominated by them respectively, or by any of them, to make Inquisition, by the Oaths of Witnesses, concerning the *Metes and Bounds* of any *Forests*, which were commonly known to be such in the 20th Year of King *James*, and to return into Chancery the Inquest so taken; and the Sheriffs, *&c.* of every

'County

County where ſuch Inquiſition ſhall be taken, and the *Verderors*, *Foreſters*, *Rangers*, and other Officers of the *Foreſt* reſpectively, ſhall be aſſiſting to the Execution of ſuch Commiſſions; or where there are no ſuch Officers, or where there are any and they ſhall neglect to attend, the Commiſſioners may proceed without them.'

'And the *Metes and Bounds* of the *Foreſt* ſo returned, ſhall not be adjudged to extend farther; and all Places, which ſhall be without ſuch Metes and Bounds ſo returned, ſhall be free as if they had never been Part of the *Foreſt*, or ſo reputed.'

'Provided, That all Grounds diſafforeſted by Letters Patent, or otherwiſe, ſince the 20th Year of the Reign of King *James*, ſhall be excluded and left out of the Metes and Bounds of *Foreſts*, to be inquired into by the ſaid Commiſſioners, and are hereby declared to be diſafforeſted; and the Owners of Grounds diſafforeſted ſhall injoy Common in the *Foreſt* as heretofore.

Law Caſes.

Hen. 8. granted a Leaſe to *T. S.* of the *Foreſt of Wayland* and *Sapley*; in which the Leſſee covenanted to keep 100 Deer there, during the Term demiſed, and at the End thereof to leave the like Number there; and afterwards the King granted the Rever-

ſion thereof to the Lord *North*: Adjudged, that by the Grant of this Leaſe of theſe *Foreſts*, the Deer paſſed to the Leſſee, and that the Grantee of the Reverſion could not kill them, becauſe that would be to diſable the Leſſee to perform his Covenant. *Dyer* 149.

Where the King granted the Herbage of his *Foreſt*, and a Stranger puts in his Cattle; adjudged, that the Grantee might either diſtrain them damage-feaſant, or he might have an Action of Treſpaſs *quare clauſum fregit*; but he cannot take the Fruit of the Trees, or cut them down. *Dyer* 287.

A Man ſhall not enter the *Foreſt* in the Night-time; therefore if his Horſe is paſtured there, and he enter in the Night, and take out his Horſe, he ſhall be impriſoned, or ranſomed and bound to the Good Behaviour of the *Foreſt*. *Manwood* 214. See *Table*.

Foreſter, Is an Officer made by Letters Patent under the Great Seal, and is ſworn to preſerve *Vert* and *Veniſon* in the Foreſt, and to attend upon the Wild-Beaſts within his Bailiwick; to attach Offenders there, either in *Vert* or *Veniſon*, and to preſent the ſame at the Courts of the Foreſt, that they may be puniſhed according to the Quantity and Quality of their Offences and Treſpaſſes: Some *Foreſters* have their Office in Fee, paying to the King a Fee-Farm Rent: And a Man may be a *Foreſter* in Fee in Right of his

his Wife; some have their Office for Life, and others only during Pleasure. And *Foresters* must not Walk or make any Attachments in the Forest before they are sworn. *Manwood* 162, 163.

The Oath of a *Forester*.

YOU shall truly execute the Office of a Forester, *or Keeper of the King's Wild-Beasts, in the Walk called* P. *within the Forest of* W. *you shall be of good Behaviour yourself towards his Majesty's Wild Beasts, and the Vert and Venison of the same; you shall not conceal the Offence of any other Person, either in Vert or Venison, that shall be done within your Charge, but as well the same Offence, as also all Attachments, you shall Present at the next Court of Attachment, or Swainmote, which shall happen to be holden for the same Forest; And you shall to the uttermost of your Power maintain and keep the Assize of the Forest, and in all Things the King's Right defend concerning the same, so long as you shall be Keeper there.*

So help you God.

Every *Forester* is bound to appear at the Justice-Seat, and when he is first called, he ought to deliver his Horn upon his Knees to

to the Chief Juſtice in Eyre, which is then delivered to the Marſhal, and he pays a Fine of 6*s.* 8*d.* before it is redelivered. *Manwood* 173.

A *Foreſter* cannot hunt or kill any Deer in the Foreſt without a lawful Warrant; for if he doth, he forfeits his Office: And ſo it is if he is Negligent in apprehending Offenders, or willingly ſuffers them to kill or deſtroy the Game. *Manwood* 164, 165. 5 *Ed.* 4. *fol.* 26. *Trin.* 5 *Ed.* 4. *fol.* 5. *Placito* 64.

By **Stat.** 21 *Ed.* 1. 'A *Foreſter*, Parker, 'or Warrener ſhall not be queſtioned for 'killing a Treſpaſſer, who (after the Peace 'cried unto him) will not yield himſelf, ſo 'it be not done out of ſome other Malice.'

By **Stat.** 25 *Ed.* 3. *Stat.* 5. *c.* 7. 'No '*Foreſter*, or other Miniſter of the Foreſt, 'ſhall gather any Victuals, or other Thing, 'by Colour of his Office, but what is due 'of old Right. See *Table.*

Foreſt-Law, Is a private Law, and muſt be pleaded. 2 *Leon.* 209, 210. See *Laws of the Foreſt.*

Foreſt-Service. *Stanhope*, together with *Walſingham* and *Aukland*, in the Biſhoprick of *Durham*, were held of the Biſhop by *Foreſt-Service*, beſides Demeſnes and other Tenures. Particularly upon his great Huntings, the Tenants in thoſe Parts were bound to ſet up for him a *Field-houſe* or *Tabernacle*, with

with a Chapel, and all Manner of Rooms and Offices; as also to furnish him with Dogs and Horses, and to carry his Provision, and to attend him during his Stay, for the Supply of all Conveniencies. *Compleat English Copyholder* 511. sub. Tit. *Stanhope.*

Fox. The *Fox* is the third Beast of Chase, * and is called the 1st Year a *Cub*, and the 2d a *Fox*, and so afterwards; his Season of Hunting begins at *Christmas*, and lasteth till *Lady-Day*.

Though the Common Law warrants the Hunting of Beasts of Prey in other Men's Grounds, as the Fox and the Badger; yet 'tis not lawful to dig the Ground to unearth them, as appears by the following Case.

In Trespass for entring on and digging his Lands, the Defendant pleaded in Bar, that the common Voice was, that *quædam melis* a noisom Vermin called a Badger, was on the said Land, and had done much Harm there, and therefore he (the Defendant) came thither with his Dogs and hunted him; and in Pursuit of the said Badger he followed his Dogs to kill it, and found him in the Plaintiff's Ground, which he digged, and killed him there, and filled up the Trench with Earth again, *quæ est eadem transgressio & foditio*

* *Canutus* did not account a *Fox* a Beast of Chase, yet he was privileged in a Forest, and was not to be hurt there.

& foditio (*which is the same Trespass and Digging*); and upon a Demurrer this was adjudged an ill Plea; for there is a Difference where a Man enters on the Land of another without his Leave to find such Vermin, and where he enters in Pursuit of them when found; for in the first Case 'tis unlawful, but in the other Case 'tis justifiable; besides this Plea is ill, for the Defendant cannot justify the Digging; he might have found other Means to kill the Badger. *Gedge* or *Guest* against *Mimms*, 2 *Cro.* 321. 2 *Bulst.* 60. S. C.

In Trespass for hunting and breaking his Hedges, the Case was, A Man unkennelled a *Fox* on his own Lands, and his Hounds pursued the same *Fox* into the Grounds of the Plaintiff; and if his Hedges were broke, it was done involuntarily, in Pursuit of the *Fox*; this was adjudged a good Plea, and that he might lawfully pursue the *Fox*, because 'tis a noisome Creature to the Publick. *Poph.* 163. in *Miller* and *Cowdry*'s Case.

Justification in Trespass, where the Defendant was sued, and justified for hunting and killing *Foxes* and Badgers.

AND *the aforesaid* T. S. *as to the whole Trespass aforesaid, in the aforesaid Place called*

called B. *with the Appurtenances, ſuppoſed to be, except the Breaking of the Cloſe aforeſaid and digging of the Soil aforeſaid, ſaith, that he is not thereof guilty; and of this puts himſelf upon his Country,* &c. *And as to the Breaking of the Cloſe aforeſaid and the Soil in the aforeſaid Cloſe called* B. *above ſuppoſed to be done, ſaith, that the aforeſaid* (Plaintiff) *his Action aforeſaid, againſt the ſaid* (Defendant) *ought not to have, becauſe he ſaith, That within the Cloſe aforeſaid called* B. *before the Time aforeſaid, in which the Treſpaſs aforeſaid, above ſuppoſed to be done, there were certain Earths and Kennels, wherein Badgers and Foxes, being hurtful living Creatures, and which were wont to kill Lambs, and other living Creatures, profitable and neceſſary for the Food and Suſtenance of Men, did Earth and Kennel themſelves; And the ſame* T. *further ſaith, that he the ſaid* T. (on ſuch a Day and Year) *in a certain Cloſe of Land, called* W. *did find the Footing of two Badgers, being hurtful Creatures and which were uſually accuſtomed to kill Lambs, and other ſuch like living Creatures as aforeſaid; and the ſame Footing of the ſaid Badgers ſo found, from the aforeſaid Cloſe called* W. *into the aforeſaid Cloſe called* B. *at the aforeſaid Time,* &c. *did follow and hunt, into which ſaid Cloſe the aforeſaid two Badgers, the aforeſaid Time in which,* &c. *in the ſaid Earths had Earthed themſelves there, by which the ſame* T. S. *the aforeſaid*

aforesaid Time in which, &c. *to kill and destroy them so under the Earth*, (as aforesaid) *Earthing in the Soil aforesaid, in the said Close called* B. *then and there did dig, and them then and there did kill and destroy, as it was lawful for him; which said Following and Hunting of the Badgers aforesaid into the aforesaid Close called* B. *are the same Breaking of the Close aforesaid, and Digging of the Soil aforesaid, whereof the aforesaid* (Plaintiff) *above against him Complaineth; and this he is ready to verify*, &c.

The Laws for paying Rewards for *Foxes*, Crows, and other Ravenous Creatures, are expired. See the *Table*.

Frank-Chase, Is a Liberty of *Free-Chase*; by which all Persons, that have Lands within the Compass thereof, are prohibited to cut down any Wood, *&c.* without the View of the Forester, though it be in his own Demesnes. *Cromp. Jur.* 187.

Fresh-Suit *within the View*, impowers the Officers that pursue Trespassers in the Forest to seize them, even without the Bounds of it. *Fowl*, see *Wild Duck*.

Game. By **Stat.** 4 & 5 *W. & M. c.* 23. 'All the Laws now in Force, for 'the better Preservation of the *Games* of 'this Kingdom, shall be duly put in Execution.'

By

By **Stat.** 3 *Geo.* 1. *c.* 11. 'The *Stat.* 5 & 9 *Ann.* and all others now in Force, for the better Preſervation of the *Game*, and all Thing therein contained, not hereby altered, ſhall remain in full Force.'

By **Stat.** 8 *Geo.* 1. *c.* 19. for the better Recovery of the Penalties inflicted upon Perſons who deſtroy the *Game*, it is enacted, 'That wherever any Perſon ſhall, for any Offence hereafter to be committed againſt any Law now in Being, for the better Preſervation of the *Game*, be liable to pay any pecuniary Penalty, upon Conviction before any Juſtice or Juſtices of the Peace, it ſhall be lawful for any other Perſon whatever, either to proceed to recover the ſaid Penalty by Information and Conviction before a Juſtice; or to ſue for the ſame by Action of Debt, &c. in any Court of Record, wherein no Eſſoin, &c. ſhall be allowed, or more than one Imparlance; and the Plaintiff, if he recover, ſhall have double Coſts.'

'Provided, That all Suits and Actions to be brought by Force of this Act, ſhall be brought before the End of the next Term after the Offence committed; and that no Offender againſt any of the Laws now in Being for the better Preſervation of the *Game*, ſhall be proſecuted for the ſame Offence, both by the Ways preſcribed by this Law and by the Way preſcribed by

'by any of the former Laws; and that in 'case of a second Prosecution, the Person 'so doubly prosecuted may plead in his De- 'fence the former Prosecution pending, or 'the Conviction or Judgment thereupon 'had. See *Qualification.*

The Form of a Declaration in Debt, upon the Statute of the 8 *Geo.* 1. *cap.* 19.

Wilts, } T. S. *Gent. who as well for the to wit.* } *Poor of the Parish of* Biddison *in the County aforesaid, as for himself, in this Behalf prosecutes, Complains of* L. R. *in the Custody of the Marshal of the* Marshalsea, *&c. of a Plea, that he render to the said Poor, and to the said* T. S. 20s. *of lawful Money of* Great Britain, *which to the said Poor and the said* T. S. *who as well, and so forth, he owes, and unjustly detains; for that,* to wit, *Whereas by a certain Act of Parliament of our late Sovereign Lord* George *the First, of* Great Britain, France *and* Ireland *late King, Defender of the Faith, and so forth, held at* Westminster *in the eighth Year of his Reign, it was amongst other Things enacted, by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in the same Parliament assembled, and by the Authority of*

the

the same, That wheresoever any Person shall, for any Offence to be hereafter committed against any Law now in Being for the better Preservation of the Game, *be liable or subject to pay any pecuniary Penalty or Sum of Money, upon Conviction before any Justice or Justices of the Peace, it shall and may be lawful for any other Person whatsoever, either to proceed to recover the said Penalty, by Information and Conviction before a Justice or Justices of the Peace, in such Manner as is in such Law contained, or to sue for the same by Action of Debt, in any of his Majesty's Courts of Record, wherein no Essoin, Protection, Wager of Law, or more than one Imparlance shall be allowed; and wherein the Plaintiff, if he recovers, shall likewise have his double Costs; as in and by the said Act more fully it doth and may appear. And the said* T. S. *who as well, and so forth, further saith, That by another Act in Parliament of our late Sovereign Lord and Lady* William *and* Mary, *of* England, Scotland, France *and* Ireland *late King and Queen, Defenders of the Faith, and so forth, held at* Westminster *in the fourth and fifth Years of their Reign, it was amongst other Things enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in the same Parliament assembled, and by the Authority of the same, That if any Tradesmen, Apprentices, and other dissolute Persons neglecting*

their

their Trades and Imployments, shall presume to hunt, hawk, fish or fowl, (unless in Company with the Master of such Apprentice, duly qualified by Law) such Person or Persons, upon Conviction before some Justice of Peace of the same County, shall forfeit the Sum of 20 s. *one Moiety to be paid to the Informer, and the other Moiety to the Poor of the Parish where the Offence is committed, as in and by the said last recited Act it doth more fully and at large appear: And the aforesaid* T. S. *saith, That after the making of the Statute aforesaid,* to wit, *the* 28*th Day of* September *in the seventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God now of* Great Britain, France *and* Ireland *King, Defender of the Faith, and so forth, the aforesaid* L. *being a dissolute Person neglecting his Trade and Imployment, at* H. *in the Parish aforesaid, the Day and Year last mentioned, unlawfully did hunt and follow Greyhounds and Hounds, in and upon the Lands of the said* T. S. *who as well, and so forth, in the Parish aforesaid; which Hunting is an Offence committed since the making the Statute aforesaid, and against the Law then and now still in Being for the better Preservation of the* Game; *by Virtue whereof the aforesaid* L. *is subject and liable to pay a pecuniary Penalty, upon Conviction before a Justice or Justices of the Peace; from whence this Action accrued, for the said Poor of the said Parish of* Bid-

dison,

diſon, *where the Offence aforeſaid was committed, and alſo to the ſaid* T. S. *who as well, and ſo forth, to receive and have of the aforeſaid* L. 20s. *of lawful Money, by the aforeſaid* L. *by Virtue of the Statute aforeſaid forfeited: Yet the ſaid* L. *although often requeſted, the ſaid* 20s. *to the Poor aforeſaid and the ſaid* T. S. *who as well, and ſo forth, hath not rendered, but the ſame to the ſaid Poor and to the ſaid* T. S. *who as well, and ſo forth, to render hath hitherto altogether refuſed, and ſtill doth refuſe; wherefore the ſaid* T. S. *who as well, and ſo forth, ſaith he is prejudiced, and hath Damage to the Value of* 5l. *and therefore, as well for the Poor of the ſaid Pariſh of* Biddiſon, *as for himſelf, he brings this Suit.*

By 4 *&* 5 *W. & M. c.* 23. For the better preſerving the Red and Black *Game* of Grouſe, commonly called Heath-Cocks and Heath-Polts, 'No Perſon ſhall on any Mountains, Hills, Heaths, Moors, Foreſts, Chaſes, or other Waſtes, between the 2d of *February* and the 24th of *June*, burn any Grigg, Ling, Heath, Furz, Gors or Fern, on Pain of being committed to the Houſe of Correction for any Time not exceeding a Month, nor under ten Days, there to be whipt and kept to hard Labour'; and by the Stat. 5 *Ann. c.* 14. for the better Preſervation of the (Breed of) *Game*, 'None ſhall cut or burn into Aſhes

'on

'on the Ground in the Foreſt of *Sherwood*, or 'any Waſte or Land in the County of '*Nottingham*, without Licence from the 'Owner of the Soil, any Ling, Heath or 'Brakes, *i. e.* Fern, on Forfeiture of 10*s.* 'and of the Aſhes ſo burnt, to the ſaid 'Owner; and Perſons buying ſuch Fern-'Aſhes ſhall forfeit 10*s. per* Peck; one 'Moiety to the Poor, *&c.* the other to the 'Informer; the Officers of the Foreſt and 'the Owners of the Land may take away 'the Inſtruments uſed for the ſaid Purpoſes, 'and keep them to their own Uſe. A Ju-'ſtice of the Peace may, on Complaint, iſſue 'his Warrant to apprehend an Offender, and 'if the Party be convicted by the Oath of 'one or more Witneſſes, and do not imme-'diately pay the Forfeitures, he ſhall be 'committed to the Houſe of Correction, 'and kept to hard Labour for a Month, 'unleſs the Penalties be ſooner paid.' (See *Hare*).

Game-Keeper, Is one who has the Care of Keeping and Preſerving of the *Game*, being appointed thereto by Lords of Manors, *&c.* he has a limited Authority, and if he tranſgreſſes his Bounds, the Law no longer looks on him as qualified.

'By **Stat.** 22 *&* 23 *Car.* 2. *c.* 25. Lords 'of Manors or other Royalties, not under 'the Degree of an Eſquire, may by Wri-

'ting

ting under their Hands and Seals authorize one or more * *Game-keepers*, who may seise all Guns, Bows, Grey-hounds, setting Dogs, Lurchers, or other Dogs to kill Hares or Conies; Ferrets, Tramels, Lowbells, Hays or other Nets, Hare-pipes, Snares or other Engines for taking Conies, Hares, Pheasants, Partridges or other *Game*, used within such Manors by Persons prohibited by this Act to use the same: [See **Qualification**] Such *Game-keepers* and others, by Warrant from a Justice of Peace may search the Houses of such Persons so prohibited, as shall be suspected to keep such Guns, *&c.* and seize them for the Use of the Lord of the Manor, or otherwise destroy them.'

By **Stat.** 5 *Ann. Sess.* 2. *c.* 14. 'Any Lord of a Manor may, by Writing under his Hand and Seal, impower his *Game-keeper* to kill any *Game* whatsoever; but if such *Game-keeper*, under Colour of such Power to kill or take for the Use of such Lord, sell or dispose thereof without the Consent or Knowledge of such Lord, and shall be convicted upon Complaint of such Lord, by the Oath of one or more Witnesses, before a Justice of Peace, such *Game-keeper* shall be committed to the

'House

* See 9 *Annæ*, *c.* 25.

'House of Correction for three Months, 'and be kept to hard Labour.'

By **Stat.** 9 *Ann. c.* 25. the *Stat.* 5 *Ann. c.* 14. is made perpetual; 'And no Lord of 'a Manor shall appoint more than one '*Game-keeper* in one Manor with Power 'to kill and destroy the *Game*, and his Name 'shall be entred with the Clerk of the Peace 'without Fee, who shall give him a Cer-'tificate thereof, paying one Shilling; and 'if any *Game-keeper* whose Name shall not 'be thus entred, or who is not qualified to 'kill *Game*, shall kill any Hare, *&c.* or if 'such *Game-keeper*, or any other Person, not 'being qualified in his own Right to kill '*Game*, shall sell or expose to Sale, any 'Hare, *&c.* he shall for every Offence incur 'such Forfeitures as by the Act 5 *Ann. c.* 14. [See **Pheasant**] are inflicted on 'Higlers, *&c.* and such Forfeitures to be 'recovered in such Manner as prescribed by 'that Act.'

By **Stat.** 3 *Geo.* 1. *c.* 11. 'No Lord 'or Lady of a Manor shall appoint any 'Person to be a *Game-keeper*, with Power to 'kill or take *Game*, unless such Person be 'qualified so to do by the Laws of this 'Realm, or be truly a Servant to the said 'Lord or Lady, or be immediately imploy-'ed to kill the *Game* for the sole Use of the 'Lord or Lady. And no Lord, *&c.* shall 'authorize any Person, not qualified by

'Law,

‘ Law, to keep or use any Grey-hound, *&c.* ‘ or any Engine to kill *Game*; and every ‘ unqualified Person, or not being truly a ‘ Servant of any Lord, *&c.* or not imme- ‘ diately imployed to take or kill *Game* for ‘ the sole Use of such Lord, *&c.* who under ‘ Pretence of any Deputation, *&c.* to him ‘ granted by any Lord, *&c.* shall take or ‘ kill any *Game*, or use any Grey-hounds, ‘ *&c.* being convicted thereof, shall for ‘ every Offence incur such Forfeiture, *&c.* ‘ as are appointed to be inflicted by *Stat.* ‘ 5 *Ann. Sess.* 2. *c.* 14. *&* 9 *Ann. c.* 25.

A Commission for a *Game-keeper.*

GEORGE the Second, *by the Grace of God, of* Great Britain, France *and* Ireland *King, Defender of the Faith,* &c. **To** *all to whom these Presents shall come, Greeting:* **Know ye,** *that we of our special Grace, and by the Advice and Consent of the Chancellor and Council of our Duchy of Lancaster, have appointed, authorized and impowered,* **And** *by these Presents do for us, our Heirs and Successors, appoint, authorize and impower our trusty and well beloved* H. M. *of our County of* S. *Gent. to be* Game-keeper *of and within our Manors of* H. *and* P. *with their and every of their Royalties, Members and Appurtenances in our said County, during our Pleasure*; And

we do hereby give and grant unto him the said H. M. *during our Pleasure, full Power and Authority to seize and take all and all Manner of Guns, Bows, Grey-hounds, Setting Dogs, Lurchers, and other Dogs, Trammels, Low-bels, Hays or other Nets, Hare-pipes, Snares or other Engines for taking Conies, Hares, Pheasants, Partridges or other* Game; *and also all and all Manner of fishing Nets, Angles, Leaps, Pipes and other Instruments, or Engines for taking of Fish, used and imployed within the said Manors or either of them, or the Royalties, Members and Precincts thereof, by any Person or Persons whatsoever, prohibited by the Laws of this Realm in any Wise to use, imploy and keep the same, as any other* Game-keeper *may lawfully do.* And *further we do hereby for us, our Heirs and Successors, give and grant unto the said* H. M. *during our Pleasure, full Power and Authority to do all and every Act or Acts, Thing or Things, which and as by the Law of this Realm are requisite and necessary for the Preservation of our* Game *within our said Manors and Precincts, and for the Discovery of Offenders therein against the Laws and Statutes in that Case made and provided.* And *lastly, we do hereby Command all Mayors, Bailiffs, Justices, Constables and all other Persons whatsoever, whom it may concern, that they be diligently aiding and assisting unto him the said* H. M. *in the due Execution*

cution of this our Commission. **Given** *at our Palace,* &c.

A Deputation for a *Game-keeper.*

Treble Sixpenny Stamp. 3 Geo. 1. c. 11. 22 & 23 *Car.* 2. *c.* 25.

TO all *People whom these Presents may concern:* **Know ye,** *That I* R. P. *of,* &c. *Esq; Lord of the Manor of* G. *in the County of* H. *do hereby make, constitute and appoint* W. W. *of,* &c. *who is truly and properly my Servant,* [*or,* a Person immediately appointed and imployed to take and kill *Game* for my sole Use and Benefit; *or,* being qualified by the Laws of this Realm, to take and kill the *Game, as the Case is*] *to be my* Game-keeper *within my said Manor, according to an Act of Parliament in that Case made in the third Year of the Reign of King* George *the First, during my Will and Pleasure;* **And** *I do also hereby authorize the said* W. W. *by Virtue of another Act of Parliament in that Case made, to take away any Hare, Pheasant, Partridge or any other* Game, *which he shall find in the Custody of any Person or Persons within my said Manor, not being duly qualified to kill the* Game; **And** *also to seize and take away, for my Use, all Grey-hounds, Setting Dogs, Lurchers or other Dogs, to kill Hares or Conies; Guns, Nets or other Instruments*

ments for the Deſtruction of the Game, *from any Perſon or Perſons within my ſaid Manor, not being duly qualified to uſe the ſame:* **And** *further to act and do all and every Thing and Things which belong to the Office of a* Game-keeper, *purſuant to the ſeveral Acts of Parliament made for the Preſervation of the Game.* **Given,** &c.

The Entry of it with the Clerk of the Peace.

June 6, 1735.

Huntingdon, *to wit.* } BE it remembered, *That the Day and Year above-written, the within Deputation from* R. P. *Eſq; to his* Game-keeper W. W. *was entred by me* W. C. *Clerk of the Peace for the ſaid County, on the Behalf of the ſaid* R. P. *according to the Direction of the Statute.*

W. C. Clerk of the Peace.

The Clerk of the Peace's Certificate.

June 6, 1735.

Hunt'don, *to wit.* } THeſe *are to certify, That the Day and Year above-written, the Deputation from* R. P. *Eſq; to his* Game-keeper W. W. *was duly entred by me* W. C. *Clerk of the Peace for the ſaid County,*

County, according to the Direction of the Statute in that Case made.

W. C. Clerk of the Peace.

His Fee by Statute 9 *Ann.* is one Shilling.

A Mittimus *of a* Game-keeper *to the House of Correction, for disposing of the* Game, *on* 5 Ann. c. 14.

To the Constable of, &c. and to *D. F.* Keeper of the House of Correction.

Huntingdon, *to wit.* } WHereas W. W. *of*, &c. *being impowered under the Hand and Seal of* R. P. *Esq*; *Lord of the Manor of* G. *in the said County, to kill* Game *in his said Manor for his Use, did on*, &c. *kill one Hare in the said Manor, and did on the next Day sell the same to* A. S. *of*, &c. *without the Consent or Knowledge of the said* R. P. And whereas *the said* W. W. *hath on the Day of the Date hereof, and upon the Complaint of the said* R. P. *been duly convicted before me of the said Offence, by the Oath of* G. A. *of*, &c. These are therefore *to require you to convey the said* W. W. *to the House of Correction, at*, &c. *and to deliver him to the Keeper thereof, who is hereby required to receive him into his Custody, and safely to keep*

him in the House of Correction, for the Space of three Months next ensuing, there to be kept to hard Labour. Given under my Hand and Seal, *&c.*

A Warrant to levy 5*l.* upon one (not qualified) for killing a Hare, under Pretence of being a *Game-Keeper.*

3 *Geo.* 1. *c.* 11. 5 *Ann. c.* 14. *sect.* 2. 9 *Ann. c.* 23.

To the Constable, *&c.*

Middlesex, to wit. WHereas A. B. *of* D. *in the County aforesaid, Yeoman, was on the Day of the Date hereof duly convicted before me* E. M. *Esq; one of his Majesty's Justices of the Peace for the said County, upon the Oath of* * J. W. *of*, &c. *that he the said* A. B. *did on the Day of this Instant* May, *at* D. *aforesaid, and within the Manor of the said* J. W. *kill* † *one Hare not being qualified by the Law so to do, and not being truly imployed by him to take or kill any* Game *for his sole Use and Benefit; by Reason whereof he the said* A. B. *hath forfeited* 5 l. *pursuant to the Statutes in that Case made and provided: These are*

* One Credible Witness. † Or keep a Greyhound or setting Dog, as the Case is.

are therefore to require you forthwith to levy the said Sum of 5 l. *on the Goods and Chattels of the said* A. B. *by* * *Distress and Sale thereof; and that you pay one Moiety thereof to the said* J. W. *who first informed me of the said Offence, and the other Moiety to the Overseers of the Poor of the Parish of* D. *where the said Offence was committed, for the Use of the Poor thereof.* Given, *&c.*

Note; A Conviction upon the *Game* Acts must aver the Want of Qualifications particularly, as Degree, Estate, *&c.* 2 Ld. *Raym.* 1415. See *Lucas* 26, 27.

Glandage, Mastage; the Season of turning Hogs into the Woods in Mast-time.

Grey-hounds, In *Saxon* Grighund. An Action was brought against the Defendant for killing a Brace of the Plaintiffs *Grey-hounds*. The Defendant justifies, for that the *Grey-hounds* did chase a Deer in his Park, and killed him there; and to prevent further harm, he took the said *Grey-hounds* and killed them. The Plaintiff replied, That the Deer was out of the Defendant's Park upon the Plaintiff's Land, and feeding on his Grass; that he loosed the *Grey-hounds* to chase him off his Land; that they pursued the Deer in the Park, and there killed

* If no Distress, then to the House of Correction for three Months.

him. To this the Defendant demurred, and upon Argument it was adjudged, that the Replication was naught, becauſe he does not ſay, That he did his Endeavour to ſtop the *Grey-hounds* at the Park-ſide, and prevent their Entrance therein: But then it was objected, that the Bar was naught; for though it was unlawful to chaſe in his Park, yet when the Defendant had taken the *Grey-hounds* he ought not to have killed them: And for this was cited 2 *Roll. Abr.* 567. *Lewis*'s Caſe; againſt which was cited 2 *Cro.* 44. *Wadhurſt* againſt *Damme*. Afterwards, upon Conſideration of both theſe Books, Judgment was given for the Defendant. 3 *Lev.* 28.

A Declaration for keeping and uſing *Grey-hounds*, not being qualified.

5 *Ann. c.* 14. 8 *Geo.* 1. *c.* 19.

Southampton, } J. D. *Gent. who as well for to wit.* } *himſelf, as the Poor of the Pariſh of* W. *in the County aforeſaid, in this Behalf proſecutes, Complains of* B. I. *in the Cuſtody of the Marſhal,* &c. *of a Plea, that he render to him the ſaid* J. D. *and to the ſaid Poor of the ſaid Pariſh of* W. 5 l. *which to the ſaid* J. D. *and the ſaid Poor of the ſaid Pariſh he owes, and unjuſtly detains; for that,* to wit, *That whereas the ſaid* B. *the*

20*th*

20th Day of October *in the Year of the Reign, &c. and so forth, at the said Parish of* W. *in the County aforesaid, used two* Grey-hounds *to kill and destroy the Game, against the Form of the Statute in that Case lately made and provided; he the said* B. *not being qualified so to do according to the Laws of this Realm; by which and by Force of the Statute in that Case lately made and provided, the Action accrued to the said* J. *as well for himself as for the said Poor of the said Parish of* W. *in the County aforesaid, to have and receive from the said* B. *the aforesaid* 5*l. yet the said* B. *although often requested the said* 5*l. to the said* J. *who as well, and so forth, hath not rendered, but the same to the said* J. *who as well, and so forth, to render hath hitherto altogether refused; wherefore the said* S. *who as well, and so forth, saith he is prejudiced, and hath Damage to the Value of* 10*l. and for that, as well for himself as for the Poor of the said Parish of* W. *he brings his Suit.*

Grouse, see **Game.**

Guardi, Signifies the principal Officers of the Forest. 4 *Inst.* 293.

Guns and Cross-Bows. By **Stat.** 33 *Hen.* 8. *c.* 6. 'None shall shoot in, or 'keep in his House, any Cross-bow, *Hand-'gun*, Hagbut or Demi-hake, unless his 'Lands be of the Value of 100*l. per Annum*, 'on Forfeiture of 10*l.* for every Offence;

'nor shall shoot in any *Hand-gun* under the 'Length of one Yard, nor Hagbut or 'Demi-hake of three Quarters of a Yard 'long, on the like Penalty; and any Man, 'having Lands of 100*l. per Annum*, may 'seize any such *Gun* or Cross-bow used con-'trary hereto; but he must break them in 'twenty Days after, on Pain of 40*s.* and 'none shall travel with a Cross-bow bent or '*Gun* charged, except in Time of War; or 'shoot within a Quarter of a Mile of a 'City, Borough or Market-Town, except 'in Defence of himself or his House, or at 'a Dead Mark, in Pain of 10*l.* and none 'shall command his Servant to shoot in a '*Gun* or Cross-bow, except as above, on the 'like Penalty; the above Penalties to be 'divided between the King and the Prose-'cutor.'

'But the Followers of Lords Spiritual and 'Temporal, Knights, Esquires, Gentlemen, 'Inhabitants of Cities, *&c.* and those that 'dwell two Furlongs distant from a Town, 'may keep in their Houses, and shoot (at a 'Dead Mark only) with *Guns* not under the 'above Lengths.'

'Persons impowered by the King to take 'away *Guns*, *&c.* in Forests, *&c.* may re-'tain the same; and Smiths and Merchants, 'that make and sell *Guns*, may keep them 'in their Houses, the several Lengths above 'being duly observed.'

'Any

'Any Perſon may convey the Party offending againſt this Act before the next Juſtice of Peace, who may commit him to Priſon till the Penalty is ſatisfied, which in this Caſe ſhall be divided between the King and him who takes the Offenders.'

'Juſtices in Seſſions, and Stewards of Leets have Power to hear and determine theſe Offences; and when the Conviction is in the Seſſions, the whole Forfeiture ſhall go to the King: When in a Leet, one Half is the King's, and the other ſhall be divided between the Lord and the Proſecutor.'

'If a Jury wilfully conceal any Thing, the Juſtices or Steward have Power to impanel another Jury, by whom, if the firſt Jury be found guilty of Concealment, they ſhall forfeit 20*s.* a-piece, *viz.* to the King if in Seſſions; but if in a Leet, one Half to the Lord, the other to the Proſecutor.'

'Forfeitures ariſing by this Act ſhall be ſued for by the King within one Year, and by a common Perſon within ſix Months, otherwiſe they ſhall be loſt.'

'A Servant may by Command uſe his Maſter's Croſs-bow or *Gun*, ſo as he ſhoot at no Fowl, Deer or other Game: And any Owner of a Ship may keep a *Gun*, but only to uſe it in the Ship.'

By Stat. 3 *Jac.* 1. *c.* 13. 'If any Perſon not having 40*l.* *per Annum* in Lands or 200*l.* in Goods, or ſome incloſed Ground uſed for Deer or Conies worth 40*s.* *per Annum* at leaſt, ſhall keep any *Gun*, Bow or Croſs-bow, to kill Deer or Conies, *&c.* it ſhall be lawful for any Perſon, having Lands worth 100*l.* *per Annum*, to take ſuch *Gun*, &c. from any ſuch Perſon, and convert the ſame to his own Uſe.

By 22 *&* 23 *Car.* 2. *c.* 25. 'Perſons not having Lands, or ſome other Eſtate of Inheritance, in their own or their Wives Right of 100*l.* *per Annum*, or for Life, or Leaſe of 99 Years of 150*l.* *per Annum*, other than the Son and Heir of an Eſquire, or other Perſon of higher Degree, and Owners and Keepers of Foreſts, Parks, Chaſes, or Warrens ſtocked with Deer or Conies for their neceſſary Uſe in Reſpect of the ſaid Foreſts, *&c.* are declared to be Perſons not allowed to keep any *Guns*, Bows, *&c.*' and therefore liable to the Penalty of 10*l.* by ſaid Stat. of the 33 *H.* 8. and *Guns*, *&c.* ſeized by 3 *Jac.* 1. *c.* 13.

The

The Form of a Conviction upon the *Statute* 33 *H.* 8. before one Juſtice.

[Proſecution by the King to be within a Year; by any other Perſon within ſix Months.]

Suſſex, } BE it remembered, *That this*
to wit. } *6th Day of* February *inſtant, in the ſeventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God now of* Great Britain, France *and* Ireland *King, Defender of the Faith, and ſo forth,* J. R. *of* H. *in the County aforeſaid, Labourer, came before me* J. C. *Eſq; the next Juſtice of our ſaid Lord the King, aſſigned to keep his Peace in the County aforeſaid; and then and there upon his Oath ſaid and depoſed, That* W. P. *late of* H. *aforeſaid in the County aforeſaid, Yeoman, the firſt Day of* January *in the ſaid ſeventh Year of the Reign, and ſo forth, at* H. *aforeſaid in the County aforeſaid, had and kept a* Hand-gun, *and then and there, with the* Hand-gun *aforeſaid charged with Gun-powder and Hail-Shot, unlawfully and unjuſtly did ſhoot, againſt the Form of the Statute in that Caſe made and provided; the ſaid* W. P. *not then having in his own Right, or in Right of his Wife, or for the Uſe of the ſaid* W. P. *or any other Perſon*

Person or Persons having to the Use of the said W. P. *any Lands or Tenements in Fee, Annuity or Office of the yearly Value of one hundred Pounds; And forasmuch as that the aforesaid* W. P. *being taken and brought before me the aforesaid next Justice, by the said* J. R. *for the Offence aforesaid, and charged with the said Offence in Manner aforesaid, could not deny the same:* **Therefore** *it is considered by me the aforesaid next Justice, That the said* W. P. *hath forfeited the Sum of* 10*l.* *according to the said Statute in that Case made and provided; Half of which said Sum of* 10*l.* *is to be paid to the Use of our said Lord the King, and the other Half to be paid to the said* J. R. *he being the first Bringer of the said* W. P. *before me the said next Justice for the Offence aforesaid, according to the Direction of the Statute aforesaid; And that the aforesaid* W. P. *be committed to the Gaol of the County aforesaid, there to remain until he hath paid the said* 10*l.* *to the Uses aforesaid, according to the Direction of the said Statute.* (See *Table.*)

A Declaration

A Declaration in Debt for ſhooting with a *Gun* not being qualified.

Stat. 8 *Geo.* 1.

Huntingdon, } A. J. *late of* S. *in the ſaid*
to wit. } *County, Yeoman, was attached to anſwer to the Lord the King and* W. H. *who as well for the ſaid Lord the King, as for himſelf in this Behalf proſecutes, of a Plea, that he render unto the ſaid Lord the King and the ſaid* W. *who as well, and ſo forth,* 10 l. *of lawful Money of* Great Britain, *which to the ſaid Lord the King and the ſaid* W. *who as well, and ſo forth, he owes and unjuſtly detains, and ſo forth; and whereof the ſaid* W. *who as well, and ſo forth, by* H. H. *his Attorney, ſaith, That whereas the ſaid* A. *the ſixth Day of* January *in the ſeventh Year of the Reign of the ſaid Lord the now King, not having in his own Right, or in Right of his Wife, or for the Uſe of the ſaid* A. *or any other Perſon or Perſons, having to the Uſe of the ſaid* A. *any Lands or Tenements in Fee, Annuity or Office, of the yearly Value of one hundred Pounds, had and kept a certain* Gun, *and then and there loaded or charged the ſaid* Gun *with Gun-powder and Shot, and did ſhoot therewith, againſt the Form of the Statute in that Caſe made*

made and provided; by which and by Force of the said Statute the said A. *forfeited ten Pounds for the said Offence; whereby and by Force of the Statute in that Case made and provided, the Action accrued to the said Lord the King and the said* A. *who as well, and so forth, to have and receive from the said* A. *the said* 10*l. yet the said* A. *although often requested, the said* 10*l. to the said Lord the King and the said* W. *who as well, and so forth, hath not rendered, but the same to them hitherto to render hath altogether refused, and still doth refuse; Wherefore the said* W. *who as well, and so forth, saith, that he is prejudiced, and hath Damage to the Value of* 20*l. and therefore as well for the said Lord the King, as for himself, he brings his Suit.*

Law Cases.

One *Cole* being brought before a Justice of Peace upon a Warrant against him for *shooting in a Gun*; and upon Examination and Proof being convicted thereof, he was committed till he should pay 10*l.* one Moiety to the Crown, the other to the Informer; and the Justice having made a Record of the Conviction, it was certified into *B. R.* upon the Return of an *Habeas Corpus*; and adjudged, that if the Statute 33 *H.* 8. *c.* 6. is rightly pursued, no Court could discharge the

the Offender without paying the Forfeiture. *W. Jones* 170.

A Conviction was certified into *B. R.* againſt one for *ſhooting in an Hand-gun*, not being qualified according to Statute 33 *H.* 8. by which Statute the Juſtice of Peace hath Authority to commit the Offender, upon due Examination and Proof; and now it was inſiſted for the Defendant, that the Proof of this Offence ought to be made by a Jury, and not by a Witneſs before a Juſtice of Peace; but it was adjudged, that in this Caſe Proof might be made by Witneſſes, and not to a Jury, and that no Writ of Error lies upon this Conviction. The *King* againſt *Saunders*, 1 *Vent.* 33, 39. *Sid.* 419. S. C. 1 *Sand.* 262. S. C.

The Defendant was convicted before a Juſtice of Peace for keeping a *Gun*, not having 100*l. per Annum*, according to the Statute 33 *Hen.* 8. and now the Record of this Conviction being removed into *B. R.* it was objected, that the Words in the Indictment were, *non habuiſſet* 100*l. per Annum* generally, but did not ſet forth when; for he might have 100*l. per Annum* when he kept the *Gun*, though not at the Time when he was convicted; but it was anſwered, that the Word *habuiſſet* ſhall relate to all Times, and 'tis as much as to ſay *nunquam habuiſſet*; and the Indictment concluding *contra formam ſtatuti*, that Concluſion muſt explain any doubtful

doubtful Words; but it was adjudged, that this being a Conviction before a Justice of Peace, the Time when the Offence was committed should be alledged with the utmost Certainty, (*viz.*) that the Defendant on such a Day and in such a Year had not 100*l. per Annum*; and for this Reason the Indictment was quashed. The *King* against *Silcox*, 3 *Mod.* 287.

The Defendant was indicted upon the Statute 33 *H.* 8. for shooting in a *Hand-gun*, and killing two *Lepos*, (instead of *Lepores*;) it was objected that the Indictment was ill, because it did not set forth, that the Defendant was not worth 100*l. per Annum*; but this Objection was not allowed, because if he was worth so much, he might have shewed it in Order to his Acquittal; but this Indictment was quashed for these Reasons, (*viz.*) because it set forth, that the Defendant killed two *Lepos*, when it should have been *Lepores*; and for that the Caption was *ad Sessionem pacis Domini Regis* [*at the Sessions of the Peace of the Lord the King*], and did not say *nunc Regis*, [*now King*] *&c.* The *King* against *Wolfe*, 2 *Keb.* 582.

The Defendant was convicted upon the said Statute 33 *H.* 8. for having a *Gun* in his House, when the Words of the Statute are against keeping a *Gun* in his House or elsewhere, and probably this *Gun* might be lent to the Defendant; therefore this being

upon

upon a penal Statute, the Words thereof ought to be pursued, for which Reason this Conviction was quashed. The *King* against *Lueling*, *Shower's Rep.* 48.

It hath been a Question, whether an Indictment will lie upon the Statute 33 *H.* 8. in the Sessions for shooting in a *Gun*; 'tis true, the Justices have Power by their Commission to punish Offences against the Peace; but Shooting in a *Gun* is not such an Offence, 'tis only the Defect of the Qualification of the Person which makes it criminal. The *King* against *Alsop*, 4 *Mod.* 49.

Note; It was said in *Bullock*'s Case, that a single Justice cannot convict upon the Statute 33 *H.* 8. unless the Offender is brought before him *instanter* [*instantly*] after the Offence committed. The *King* against *Bullock*, 4 *Mod.* 146.

Two Indictments, one was preferred against the Defendant for keeping a *Gun*, and the other for shooting in it; but they were both quashed, because the Disability of the Person was not rightly set forth. *Hill.* 9 *W.* in *B. R.*

An Indictment set forth, that Defendant had eight Nets and two *Guns* with which he had destroyed the Game; on Motion to quash the same, two Exceptions were taken; First, the Indictment does not Mention he was not qualified. 2. 'Tis not indictable since it was no Offence at Common Law.

2 *Salk.*

2 *Salk.* 460. *King* and *Whigg*. Where a new Penalty is given for a Matter which at Common Law was an indictable Offence, as for keeping Swine in a City, which is a Nusance; then one may either indict, or bring an Action on the Statute for the Penalty; but where the Statute makes the Offence, that Remedy must be taken which the Statute gives. *Salk.* 45. Indictments will not lie where there was no Offence at Common Law, because the Statute which has made the Offence, has made it punishable in another Manner. 1 *Show.* 398. Judgment for Defendant; the Name of the Case is *King* and *Fowlin*.

The Plaintiff brought an Action of Trespass against the Defendant for entring his (the Plaintiff's) House and taking away his *Gun*; the Defendant justified by Virtue of the Statute 22 & 23 *Car.* 2. [**Qualification**] setting forth, that the Lords of the Manors and other Royalties may depute Game-keepers, who by Virtue of such Deputation may seize *Guns* within the Precincts of their Manors, *&c.* and that such Game-keepers or any other Person may, by a Warrant from a Justice, search the Houses of Persons suspected to keep *Guns*, and seize them for the Use of the Lord of the Manor; that Sir *E. W.* was seised in Fee of the Hundred of *Burton*, and of a Court-Leet there, *&c.* and that the Defendant, by a War-

a Warrant of a Juſtice, entered into the Liberty of *W.* to ſearch in the Manors of *M.* and *W.* and within the Precincts of the Court-Leet and Hundred aforeſaid, which were within the Liberty of *W.* and that Sir *E. W.* was Lord of the ſaid Manor, and that the Plaintiff was not qualified to keep a *Gun*; and being ſuſpected to keep one, the Defendant entered his (the Plaintiff's) Houſe, which was *within the ſaid* * *Hundred*, and within the Precincts of the Court-Leet, and Liberty of *W.* where he (the Defendant) found the ſaid *Gun*, and ſeiſed it, *&c.* and upon a Demurrer to this Juſtification it was held good, though there was no Occaſion for the Defendant to ſet forth all this Matter, becauſe he acted under a Warrant of a Juſtice of Peace, therefore he might have pleaded the general Iſſue; but if he had juſtified as a Game-keeper only, and without a Warrant, in ſuch Caſe he muſt plead ſpecially. *Bowkby* againſt *Williams*, *Lutw.* 502.

Bluet, qui tam, &c. verſus *Needs*, *C. B.*

DEclaration *verſus* Defendant, an Attorney of this Court, for 40*l.* Debt; for that he at *Holcomb Regis in Com. Devon*, 28 *Nov.* 1733. did uſe a *Gun* to kill and deſtroy

* It ſhould be within the ſaid Manor, becauſe the *Gun* was ſeiſed to the Uſe of the Lord of the Manor.

destroy the Game, not being qualified so to do by the Laws of the Realm, whereby an Action accrued to Plaintiff to demand 5*l.* Part of the said 40*l.*

Secondly, That 16th *January* 1733. he did keep another *Gun*, not being qualified, *&c.* by which an Action accrued for other 5*l.*

Thirdly, The same Day he exposed to Sale six Hares against the Form of the Statute, not being qualified in his own Right to kill Game, whereby an Action accrued to demand 30*l.* Residue of said 40*l.*

Defendant pleads he owes nothing, and moves in Arrest of Judgment.

FIRST, That the first Count is not good since by the Statute 5 *Annæ*, *c.* 14. §. 4. it is Enacted, That any Persons not qualified to keep and use any Grey-hounds, Setting-Dogs, Hays, Lurchers, Tunnels, or other Engine to kill and destroy the Game, shall forfeit 5*l.* but a *Gun* is not mentioned in the said Act; and therefore when by the Statute 8 *Geo.* 1. it is Enacted, That Pecuniary Penalties may be recovered by Action of Debt, *&c.* before the End of the next Term after Offence, *&c.* yet Debt lies not unless the Offence be within the Statute 5 *Ann. c.* 14.

Secondly,

Secondly, It is not sufficient to say he was not qualified, without shewing he had not 100*l.* a Year, or other Estate which makes a Qualification.

Thirdly, The Selling six Hares together is but one Offence, and by the Statute 9 *Annæ*, *c.* 25. which enacts such Penalties, as on Higlers, *&c.* by 5 *Annæ*, *c.* 14. is inflicted, *viz.* the Sum of 5*l.* which ought not to be understood 5*l.* for every Hare, Pheasant, *&c.* but for all sold at once.

But the Penalty on Higlers, *&c.* by 5 *Ann.* is 5*l.* for every Hare, Pheasant, *&c.*

For Plaintiff: As to the first *Objection*, a *Gun* is an Engine to destroy Game. So as to the second *Objection*, We have exactly pursued the Words of the Act, and if Defendant had been qualified, he must shew it. *Dyer* 312. *Carth.* 124, 304.

As to the third *Objection*, that all is one Offence, the Statute 9 *Ann.* refers to the 5 *Ann.* which gives 5*l.* for every Hare.

Per Cur. As to the first *Objection*, the Averment of his not being qualified is sufficient, since the Words of the Act are pursued; and the Defendant may come and shew his Qualification.

As to the second *Objection*, this is after Verdict, and it is a Matter of Evidence whether a *Gun* be an Engine to kill and destroy Game.

And as to the *Third*, the Statute 9 *Ann.* saith not he shall for every Offence pay 5 *l.* but shall forfeit the Penalty of the Statute 5 *Ann.* on Higlers, and which is 5 *l.* for every Hare.

Note; The Jury found 10 *l.* without shewing to which of the Offences it is to be applied. *Per Cur.* This being a Debt, the Jury may find Part of the Debt; Judgment for the Plaintiff. *Comyns* 522 *to* 525.

Note; If a Man stands in one County and shoots into two or three (as he may in some Places) he must be convicted by the Justice or Justices where the Offence was committed, *i. e.* where he stood when he shot, not where the Object was which he shot at. *King* and *Alsop*, *Show.* 339.

The Defendant was convicted by the Justices at Sessions on 5 *Ann. c.* 14. *sect.* 4. that he unlawfully had and kept in his Custody a *Gun*, being an Instrument for the Destruction of the Game. Motion to quash the Conviction, because that simply Keeping a *Gun* was not within the Act. *Lee Chief Justice:* 'Tis true a *Gun* is mentioned amongst other Things in 22 & 23 *Car.* 2. but in 5 *Ann.* the Word *Gun* is omitted amongst the Instruments mentioned for the Destruction of Game; since therefore the Instrument, upon the keeping of which this Conviction is grounded, is omitted, and at the End of the Act these Words are used, 'or

'other

'other Inſtrument for the Deſtruction of 'the Game,' it muſt mean ſuch as are originally and in themſelves adapted for the Deſtruction of the Game. Lurchers and Greyhounds are expreſly mentioned in the Act, ſo it need not be ſaid they are kept for Deſtruction of the Game. *Probyn* Juſtice: The Defendant confeſſing he kept this *Gun* for the Deſtruction of the Game, will carry the Conviction no farther than the Words of it extend, and no Penal Law ought to be carried any farther than the Words of the Statute, inaſmuch as every ſuch Law is an Abridgment of a Man's natural Liberty; it muſt be proved that the *Gun* was kept for the actual Killing the Game; and this can be done in no other Way than by ſhewing he did attempt it, and frequently has intended ſo to do; as by proving he run a Hare with his Grey-hound, this would be ſufficient to bring a Man within the Act. When the Court had quaſhed the Conviction, a Gentleman then preſent ſaid, that at the Time of making this Act, Lord *Macclesfield* deſired the Word *Gun* might be omitted, and not mentioned among the other Engines deſigned for the Deſtruction of the Game, ſince great Inconveniencies would inſue, as none could keep a *Gun* in his Houſe for his Safety. *King* and *Gardiner*, *Trin.* 11 *Geo.* 2.

Note; At a *Justice-Seat* held for the Forest of *Windsor*, one *Wheatly* was fined 50 *s.* for carrying a *Gun* in the Forest to kill the Deer. *Wheatley*'s Case, *W. Jones* 275.

Hampton-Court Chase. King *Hen.* 8. intending to make a Forest about his House at *Hampton-Court*, assigned and limited several Grounds for that Purpose, extending over the Lands of several Freeholders and Copyholders within the Manors, Townships and Villages of *East* and *West Mulsey*, *Walton*, *Esher*, *Weybridge*, and Part of *Chobham*; but finding he could not erect either Forest or Chase over other Men's Grounds, without the Consent of the respective Owners of those Lands; therefore by an Indenture bearing Date 1 *October* in the 29th Year of his Reign, and made between him of the one Part, and Sir *Richard Page*, *Thomas Henage*, Esq; and several others, the Owners of the said Lands, on the other Part, it was agreed between them, that the Lands thus intended for a Forest should be called *Hampton-Court Chase*, but that it should have the like Liberties, Jurisdictions and Preeminences, Laws, Statutes and Officers, as any other Forest or Chase in the Realm; and that all Offences done therein should be punished as if done in any Forest or Chase whatsoever; and by this Indenture the King did covenant with the said Owners of the Lands, that they might

might fell and take their Woods, Groves and Coppices at Pleasure, without any View of the Officers, and that they might make great Hedges and Fences about their Corn to keep out the Deer; and for a Recompence to them, that the third Part of the Fee-Farm Rent of every Freeholder should from thenceforth be abated, and the Moiety of the Fine of every Heir on his Admittance to a Copyhold, *&c.* which Indenture being recited in an Act of Parliament made in the 31st Year of his Reign, it was accordingly enacted. 4 *Inst.* 301. By the same Act the Manor of *Hampton-Court* was made an Honour, by the Name and Title of the Honour of *Hampton-Court.*

Hare. The *Hare* is a Beast of Forest, and also of Warren, and by the old Foresters was called the King of all Beasts of Venary; but there is little Variety of Terms concerning this Beast, being called the first Year a *Leveret*, the second a *Hare*, and the third a *Great Hare.* The Season for hunting begins at *Michaelmas*, and to end about the latter End of *February.*

By **Stat.** 14 & 15 *Hen.* 8. *c.* 10. 'None 'shall trace, destroy or kill any *Hare* in the 'Snow; and Justices of Peace in Sessions, 'and Stewards in Leets, have Power to in'quire of such Offenders, and shall Assess 'upon every such Offender 6*s.* 8*d.* which 'Penalty assessed in Sessions shall go to the

'King; but in the Leet to the Lord 'thereof.'

By **Stat.** 4 & 5 *W. & M. c.* 23. 'Conſtables, Headboroughs and Tithingmen, by 'Warrant of a Juſtice of Peace, may enter 'and ſearch in ſuch Manner as by 3 & 4 '*W. & M. c.* 10. [See **Deer**] the Houſes 'of ſuſpected Perſons not qualified; and in 'caſe any *Hare*, Partridge, Pheaſant, Pigeon, 'Fiſh, Fowl or other Game be found, 'the Offender ſhall be carried before a 'Juſtice, and if he do not give a good Account how he came by them, or produce 'the Party of whom he bought the ſame, 'or ſome credible Perſon to depoſe upon 'Oath ſuch Sale thereof, he ſhall be convicted of ſuch Offence by the ſaid Juſtice, 'and forfeit for every *Hare*, Partridge, *&c.* 'not under 5*s.* nor exceeding 20*s.* to be 'divided betwixt the Informer and the Poor 'of the Pariſh where the Offence was committed, to be levied by Diſtreſs and Sale 'of his Goods, rendring the Overplus; and 'for Want of Diſtreſs, the Offender ſhall be 'committed to the Houſe of Correction for 'any Time not exceeding a Month, nor leſs 'than ten Days, there to be whipped and 'kept to hard Labour; and if any Perſon 'not qualified by Law do keep or uſe any 'Bows, Grey-hounds, Setting Dogs, Hays, 'Lurchers, Nets, Tunnels, Lowbells, Hare-'pipes, Snares or other Inſtruments for De-

ſtruction

'ſtruction of the Game, and ſhall be committed as above, he ſhall be ſubject to the like Penalties and Pains as aforeſaid; and if any Perſon ſo charged ſhall not before the ſame Juſtice give ſuch Evidence of his Innocence as aforeſaid, he ſhall be convicted thereof in like Manner as the Perſon firſt charged therewith is hereby directed to be, and ſo from Perſon to Perſon, till the firſt Offender be diſcovered.'

'Offenders puniſhed by this Act, ſhall not incur the Penalty of any other Law for the ſame Offence.'

'Perſons proſecuted at Law for any Thing done in Purſuance of this Act, may plead the General Iſſue, and give this Act, or any other ſpecial Matter in Evidence; and if the Verdict paſs for the Defendant, or the Plaintiffs become Nonſuit, or ſuffer a Diſcontinuance, the Defendant ſhall recover treble Coſts.'

By **Stat.** 9 *Ann. c.* 25. 'If any *Hare*, Pheaſant, Partridge, Moor, Heath Game or Grouſe, be found in the Shop, Houſe or Poſſeſſion of any Perſon not qualified in his own Right to kill Game, or being intitled thereto under ſome Perſon qualified, the ſame ſhall be adjudged an Expoſing to Sale, within the Meaning of 5 *Ann. c.* 14. [See **Higlar.**]

'If any Perſon ſhall take, kill or deſtroy an *Hare*, *&c.* in the Night-time, he ſhall

for every Offence incur such Forfeitures as aforesaid, to be recovered in the same Manner, and to the like Uses.'

An Indictment for tracing a *Hare* in the Snow.

[14 & 15 *H.* 8. *c.* 10. 1 *Jac.* 1. *c.* 27. Vide the Case of *King* and *Fowlin*, *p.* 140.]

Southampton, } *THE Jury*, &c. *upon* to wit. } *their Oaths present, That* J. T. *late of* W. *in the County aforesaid, Yeoman, the third Day of* September *in the seventh Year of the Reign*, &c. *at*, &c. *in the County aforesaid, one* Hare *with a Dog did trace, and the same* Hare *then and there in the Snow with the same Dog did destroy and kill, contrary to the Form of the Statute in that Case made and provided, and against the Peace*, &c.

A Warrant to search for Game.

[4 & 5 *W.* & *M. c.* 23.]

To the Constable of, &c.

Huntingdon, } *BY Virtue of an Act of Par-*
to wit. } *liament in this Case made, These are to charge and command you, on Sight*

hereof

hereof, to enter into and ſearch (as for ſtolen Goods) the Houſes, Out-houſes, and all other Places belonging to ſuch Perſon or Perſons, within your Precincts, as are not qualified to kill the Game; and if on ſuch Search you ſhall find any Hare, *Partridge, Pheaſant, Pigeon, Fiſh, Fowl, or any other Game, then you are forthwith to bring ſuch Perſon or Perſons, in whoſe Cuſtody the ſame ſhall be found, not being lawfully qualified as aforeſaid, before me or ſome other of his Majeſty's Juſtices of the Peace for this County, to be proceeded againſt according to Law.* Given, *&c.*

If you ſhall find any Grey-hound, Setting-Dog, Coney-Dog, Ferrets, Nets, Snares, Guns, or any Inſtruments for Deſtruction of the Game, then by Virtue of an * Act of Parliament in this Caſe alſo made, you are to ſeiſe them to and for the Uſe of the Lord of the Manor or Royalty where the ſame ſhall be found, and lay an Information before me to the End that Proſecution may be made according to Law. *Given*, &c.

* 22 & 23 *Car.* 2. *c.* 25.

A Warrant to levy the Penalty.

[4 & 5 *W. & M. c.* 23.]

To the Conſtable of, *&c.*

Huntingdon, } WHereas J. W. *of your to wit.* } *Pariſh, is brought by you before me, (being one of his Majeſty's Juſtices of the Peace for this County) for having in his Cuſtody one* * Hare *which was dead, being found in his Poſſeſſion by you, on your Search, by Virtue of a Warrant under my Hand and Seal, the ſaid* J. W. *not being lawfully qualified to kill the Game; and upon my Examination of the ſaid* J. W. *concerning the Premiſſes, he cannot give any good Account how he came by the ſame, nor produce any credible Witneſs to prove of what Perſon he bought the ſaid* † Hare, *whereby he hath forfeited, for ſuch* ‖ Hare *ſo found upon him, the Sum of* 15*s.* [or any Sum not exceeding 20*s.* nor under 3*s.*] *one Moiety to the Informer, and the other Moiety to the Poor of your Pariſh, according*

* Or two Pigeons (as the Caſe is) which were dead.
† Pigeons.
‖ For each Pigeon.
The Penalties for Fiſh or Fowl to be levied in the ſame Manner.

according to an Act of Parliament in that Case made in the fourth and fifth Years of the Reign of King William *and Queen* Mary: *These are therefore to authorize and require you, on Sight hereof, to levy the said Sum of* 15s. *by Distress and Sale of the Goods of the said* J. W. *for the Uses aforesaid, returning the Overplus, and what you do herein, you are to certify to me within six Days.* Given, *&c.*

A Mittimus *for Want of Distress.*

[4 *&* 5 *W.* & *M. c.* 23.]

To the Constable of, *&c.* and to the Keeper of, *&c.*

Huntingdon, } WHereas J. W. *of your Parish, is lawfully con-*
to wit. } *victed before me, (being one of his Majesty's Justices of the Peace for the said County) for having in his Possession one* Hare *(or as the Case is) being killed, he not being duly qualified to kill the Game; and whereas the said* J. W. *hath not sufficient Distress, whereon to levy the Fine imposed on him for this Offence: These are therefore to authorize and require you, on Sight hereof, to convey the said* J. W. *to the House of Correction aboveſaid, and deliver him to the aforesaid Keeper of the same (together with this Precept): Requiring also you the said Keeper to receive him into your*

said House, and there detain him to be whipped and kept to hard Labour for fourteen Days, [or one Month, but not less than ten Days]. Given, &c.

Note; The Law as to Pigeons, Fish and Fowl, is not altered by 5 *Annæ*.

An Information against a Person for killing a Hare, &c. on 5 *Ann. c.* 14.

THE Information of A. B. *of*, &c. *before* C. D. *Esq; one of his Majesty's Justices of the Peace for the said County, on the* —— *Day of* ——— *who saith, that on the* ——— *Day of* ——— E. F. *of* ——— *did kill and destroy a* Hare *in the Parish of* ——— *with a Greyhound* (*or as the Case is*) *the said* E. F. *not being lawfully qualified to kill the Game.*

A. B.

Taken the Day and Year above-said, before me *C. D.*

An

An Information for killing a Hare *in the Night, on the* 9 Ann. c. 25.

The Information of *H. C.* of, *&c.* taken before *A. T.* Esq; one of his Majesty's Justices of the Peace for the County of *Huntingdon*, on the seventh Day of *October* 1735.

THE said Informant, upon his corporal Oath, saith, That W. G. of, &c. did in the Night, which was between the first and second Days of this instant October, kill and destroy one Hare in a Field called C. in the Parish of S. in the County aforesaid, contrary to the Statute in that Case made and provided.

Affidavit made by a credible Person who saw the *Hare* killed.

R. K. of, &c. maketh Oath, That he this Deponent saw the said W. G. in the Information named, kill and destroy one Hare, as in the Information mentioned, and this Deponent further saith, that the said Information touching the same, given by H. C. aforesaid and every Part thereof, is true.

R. K.

Sworn the Day and Year above-said before me *A. T.*

Law

Law Caſes.

If a Man hunt and kill a *Hare* in the Foreſt, the Foreſter may apprehend him, becauſe it is a Treſpaſs in the Veniſon in the King's Foreſt: For Proof whereof, it appeareth in the *Aſſizes of the Foreſt of* Pickering, *fo.* 13. That two Men were indicted, *viz.* one *Bulmer*, for ſtriking a *Hare* in her Form; and another Man for taking a *Hare* in the *Foreſt:* One of them was committed and fined for the ſaid Offence, and was bound to his Good Behaviour in the Foreſt; and the other was outlawed. *Manwood* 175.

Chief Juſtice *Holt* delivered it for Law in *Sutton*'s Caſe, that where a Man ſtarts a *Hare* in another Man's Grounds, and kills it there, 'tis the *Hare* of the Owner of the Ground, becauſe he hath a local Property in the *Hare*; but if it's hunted into the Ground of another, and killed there, in ſuch Caſe 'tis the *Hare* of the Hunter. *Sutton* againſt *Moody*, 2 *Salk.* 556. 1 Ld. *Raym.* 251.

Treſpaſs, for that he entered into his Warren and took 100 *Hares*, and doth not ſay, *his*, yet it is good. 3 *H.* 6. *fo.* 58. *Kitchen* 118.

A Conviction *ſuper præmiſſis* for three Penalties of 5 *l.* each for killing three *Hares*, where it appears it was done the ſame Time,

is

is bad, for the * Statute does not give 5 *l.* for every *Hare*, it being but one Offence, for all was done the same Day. *Marriot* versus *Shaw & al. Mich.* 4 *Geo. Comyns.* See *Table.*

Hart, in *Saxon* heopt, Is the most noble and worthiest of the Beasts of Venary, and is called the first Year a *Hind-Calf* or *Calf*, the second a *Brocket*, the third a *Spayad*, the fourth a *Staggard*, the fifth a *Stag*, the sixth a *Hart*; and if afterwards he is hunted by the King, and escapes alive, he is called a *Hart-Royal*; and if in hunting he is driven out of the Forest, so far that he is not likely to return of himself, and the King giveth over hunting him then, because he hath made such Sport, he causeth a Proclamation to be made in all the Towns and Villages near the Place, to which he was pursued and hunted, that no Person should kill, hurt or hunt him, and appoints certain Foresters to look after him till he returns to the Forest, and afterwards he is called a *Hart-Royal-proclamed.* The Time of Grace or Season of a *Hart* begins at *Midsummer*, and lasteth till *Holy-Rood-Day.* *Manwood* 180, 199. See *Hind.*

Hawk and **Hawking;** A *Hawk* in *Saxon* is called hapoc, and is a Bird of Prey, which when reclaimed affords a noble Recreation.

By

* 5 *Ann. c.* 14.

By **Stat.** 34 *E.* 3. *c.* 22. 'A *Hawk* 'taken up shall be delivered to the Sheriff, 'who after Proclamation made in the good 'Towns of the County, shall deliver it (if 'challenged) to the right Owner.'

'If the *Hawk* was taken up by a mean 'Man, and not challenged afterwards within 'four Months, the Sheriff shall retain the '*Hawk*, satisfying the Person for taking it 'up; but if taken up by a Man of an 'Estate, who might keep a *Hawk*, the She-'riff shall restore it to him, upon answering 'the Charge of keeping the *Hawk*.'

By (*a*) **Stat.** 37 *Ed.* 3. *c.* 19. 'He who 'steals and carries away a *Hawk*, or conceals 'it after Proclamation made by the Sheriff, 'not observing the aforesaid **Stat.** 34 *Ed.* 3. 'shall be a Felon; Clergy allowed.

My Lord *Coke* in his 3 *Inst.* tells us, that the aforesaid Statute 37 *Ed.* 3. extends only to *long-winged Hawks*, and not to *Goshawks*; and that it is not material, whether they have *Vervels* on or not, so as they are really reclaimed; but before that Statute was made, it was Robbery to take either a *long-winged or short-winged Hawk* from the Perch, or from the Party; but it was not Felony to find and conceal them, before this Statute. 3 *Inst.* 97.

(*a*) *N. B.* This Statute, tho' in Print, is not of Record in the Roll of Parliament. 4 *Inst.* 51.

By

By Stat. 11 *Hen.* 7. *c.* 17. 'None shall 'bear any *Hawk* of *English* Breed, called '*Eyess*, *Goshawk*, *Tassel*, *Lanner*, *Lanneret* 'or *Falcon*, in Pain to forfeit the same to 'the King.'

'He who brings any *Eyess-Hawk* from 'beyond the Sea, shall have a Certificate 'under the Customer's Seal where he lands; 'or if out of *Scotland*, then under the Seal 'of the Lord Warden or his Lieutenant, 'certifying that she is a foreign *Hawk*, upon 'Pain of forfeiting the *Hawk*.'

'None shall take, kill or fright away 'any of the *Hawks* above-mentioned from 'the Coverts where they use to breed, in 'Pain of 10*l.* to be recovered before Justices 'of the Peace, and divided between the 'King and Prosecutor.

A Man may have a Writ of Trespass for taking his young (*a*) *Hawks*.

(*a*) Yet for taking of a *Hawk* (reclaimed) he shall not have Trespass, but Trover and Conversion. *Quære.* 2 *Lev.* 201. 1 *Salk.* 667, *&c.* And the Count ought to be, that he is reclaimed; and it is not sufficient to say he was possessed of him as of his proper Goods. *Dyer* 306. Sir *Mat. Hale*'s Commentary on *Fitzherb.* 196.

The

The Form of the Writ.

THE *King to the Sheriff*, &c. *If* A. &c. *then put by Sureties and ſafe Pledges* B. *ſo that he be before us on Tueſday next after the Morrow of* All-Souls, *whereſoever we then are in* England, [if returnable in the Common Pleas, then thus,] *before our Juſtices at* Weſtminſter, *on the Morrow of* All-Souls, *to ſhew wherefore with Force and Arms the Wood of him the ſaid* A. *at* N. *he entered, and three of his young* Hawks *of great Price, lately in the ſame Wood in a Net hatched, he took and carried away, and other Enormities did, to the great Damage of the ſaid* A. *and againſt our Peace: And have you there the Names of the Pledges and this Writ.* Witneſs, *&c.*

N. B. By this Writ it appears, that the Property of the *Hawks* are in him who hath the Land, by the Word (*his*) in the Writ. *Fitzherb. New Nat. Brev.* 197.

The Place where *Hawks*, *&c.* build their Neſts and hatch their young, is called an Ayerie; and by *Chart. de Foreſta*, *c.* 13. every Freeman may have his Ayerie of *Hawks*, Eagles and Herons, and the Honey found in his Woods within the Foreſt.

Law

Law Cases.

In Treſpaſs for ſtriking and killing *accipitrem ſuum* [*his* Hawk], upon Not guilty pleaded, the Plaintiff had a Verdict; but it was moved in Arreſt of Judgment, that the Declaration was ill, becauſe the Plaintiff did not ſet forth what Sort of *Hawk* it was, (*viz.*) whether a *Goſhawk* or a *Lanner*, &c. for the Word *accipitrem* in the Declaration is the *Genus*, and therefore the Plaintiff ought to ſhew of what *Species* the *Hawk* was; beſides he did not alledge that the *Hawk* was *reclaimed*, for it being a Bird of Prey, and *feræ naturæ*, no Man can have a Property in it, unleſs it is *reclaimed*; but adjudged, that the Declaration was good, it being *in Treſpaſs, in which a Man may declare upon his Poſſeſſion*, without ſhewing what Sort of *Hawk* it is; neither is it neceſſary in this Action to ſhew that the *Hawk* was *reclaimed*, as 'tis in *Trover*, where the Plaintiff muſt ſhew a Property in the Thing he demands: As for Inſtance; *Trover*, &c. for a *Ramiſh Hawk*; upon not guilty pleaded the Plaintiff had likewiſe a Verdict in this Action; and it was moved in Arreſt of Judgment, that this Declaration was not good, becauſe the Plaintiff had declared for a *Ramiſh Hawk*, which is a *Hawk* living *inter Ramos* [*amongſt the Boughs*], and by Conſequence *feræ naturæ*; and

and when it flies away, it hath not *animum revertendi*, [*the Sense of returning*]; and therefore *occupanti conceditur*, [*is not allowed to be in Possession*], which is this Defendant's Case; for which Reason the Plaintiff should have set forth in his Declaration, that the *Hawk* was reclaimed; and it was adjudged accordingly. *Vincent* against *Disney*, *Cro. Car.* 13. *Lister* against *Hone*, *Cro. Car.* 390. *March* 12. S. C.

By Stat. 23 *Eliz. c.* 10. *Hawking* in standing Corn, or before it be shocked, is prohibited under Pain of 40 *s.* to the Owner of the Corn, to be recovered by the Owner in any Court of Record.

Heath. In *Henry* II.'s Time, the Inhabitants of this Part of the Forest in *Surrey* were fined 100 Marks for burning of *Heath*, for it spoileth the Layer of the Deer and disturbs them. *W. Jones* 276.

Heath-cock. By **Stat.** 4 & 5 *W. & M. c.* 23. 'For the better preserving the 'Red and *Black Game* of *Grouse*, commonly 'called *Heath-cock* and *Heath-polts*, no Per- 'son shall destroy the Cover.' See *Grouse*.

Hedges. One was presented for suffering three Rood of Wood to be spoiled with Cattle: He came and shewed, that the Fence through which the Spoil came, belonged to another Man to make, and the Spoil was in his Default. But Mr. *Attorney* said, That it being within the Forest, he

whose

whose Wood is in Danger to be spoiled, ought to request the other to make the *Hedges*; and if he refuse, then he must do it himself, and have an Action on the Case against the other that ought to have done it. *W. Jones* 277.

Heron. By **Stat.** 19 *Hen.* 7. *c.* 11. 'None shall take an old *Heron*, except out 'of his own Ground, in Pain of 6 *s.* 8 *d.* 'nor a young *Heron* in Pain of 10 *s.* for 'which Forfeitures every Man that will, 'may sue by Action of Debt, or otherwise; 'and any two Justices of Peace in Sessions 'may examine the Offenders, and commit 'them to Prison till they have satisfied the 'Forfeitures, of which the said Justices are 'to have the Tenth.'

Higlar. By **Stat.** 5 *Ann. c.* 14. 'If 'any *Higlar*, Chapman, Carrier, Inn-keeper, 'Victualler or Alehouse-keeper, shall have 'in his Custody any Hare, Pheasant, Partridge, Moor, Heath-Game or Grouse, or 'shall buy, sell, or offer to sell, any Hare, '*&c.* (unless such Game in the Hands of 'such Carrier be sent up by Persons qualified to kill the Game) he shall be carried 'before some Justice of the Peace where the 'Offence is committed, and upon View or 'Oath, being convicted of the same, shall 'forfeit for every Hare, Pheasant, *&c.* 5 *l.* 'one Half to the Informer, and the other 'to the Poor of the Parish where the Of-

'fence

'fence was committed, to be levied by Di-'ſtreſs, by Warrant of the Juſtice before 'whom convicted, and for Want of Di-'ſtreſs, to be committed to the Houſe of 'Correction, for the firſt Offence, for three 'Months without Bail; for every other Of-'fence four Months.'

'Any Perſon who ſhall deſtroy, ſell or 'buy any ſuch Hare, Pheaſant, Moor, 'Heath-Game or Grouſe, and ſhall within 'three Months make Diſcovery of any *Hig-'lar*, Chapman, Inn or Alehouſe-keeper, 'or Victualler, that hath bought, ſold, or 'offered to buy or ſell, or had the ſame in 'Poſſeſſion, ſo as one be convicted of ſuch 'Offence, the Diſcoverer ſhall be diſcharged 'of the ſaid Penalties, and receive the ſame 'Benefit of ſuch Diſcovery, as other In-'formers.'

'The Juſtices within their reſpective Li-'berties, and Lords of Manors within their 'reſpective Manors, may take away any 'ſuch Hare, Pheaſant, *&c.* from ſuch '*Higlar*, *&c.* and Perſons not qualified 'to kill the ſame, if found in their Cu-'ſtody.'

A Warrant

A Warrant to levy the Penalty against a Higlar *for having a Hare in his Custody.*

[5 *Ann. c.* 14.]

To the Constable, *&c.* and the Keeper of the House of Correction, *&c.*

Huntingdon, *to wit.* } WHereas T. A. *of* H. *in the said County*, Higlar, *hath on the Day of the Date hereof been duly convicted before me* T. F. *Esq; one of his Majesty's Justices of the Peace for the said County, upon the Oath of* A. A. *of*, &c. *for that the said* T. A. *had, on the third Day of* August *last, in his Custody, at* H. *aforesaid, one Hare, contrary to the Statute in that Case made and provided; by Reason whereof he hath forfeited the Sum of* 5 l. These are therefore *to require you to levy the said Sum of* 5 l. *by Distress and Sale of the Goods of the said* T. A. *rendring to him the Overplus, if any such shall happen to be, the Charge of distraining being first deducted; and you forthwith pay one Moiety thereof to the said* A. A. *who first informed me of the said Offence, and the other Moiety to the Poor of the Parish of* H. *aforesaid, where the same was committed*; And *for Want of such Distress, that then you carry the said*

T. A.

T. A. *to the House of Correction, at,* &c. *and deliver him to the Keeper thereof, together with this Precept; who is hereby commanded to receive him into his Custody, and keep him in the House of Correction for the Space of three Months next ensuing the Date hereof, without Bail or Mainprise, this being his first Offence of this Nature:* And *hereof fail not,* &c. Given, *&c.*

The like Warrant *mutatis mutandis,* for buying, selling or offering to Sale an Hare, *&c.*

Hind, in *Saxon* hine, Is the Female of the *Hart,* and is called the first Year a *Calf,* the second a *Brocket's Sister,* and the third a *Hind.* The Season begins on *Holy-Rood-Day,* and lasteth till *Candlemas.*

Homine replegiando. If a Man be taken by the Officers of the Forest, then he shall have this Writ unto the Keeper [Warden] of the Forest.

The Form of the Writ.

THE King to our well beloved and faithful W. *of* B. *Warden of our Forests on this Side the* Trent, *or his Deputy in the Forest of* S. *We command you, That if* A. *and* B. *taken and detained in our Forest of* S. *for Trespass of Venison by them committed, for which they are indicted,*

indicted, as it is said, find you, to wit, each of them twelve honest and lawful Men of your Bailiwick, who will be bound to have them before our Justices at the next Eyre of our Forest in the County of N. *to answer the Trespass aforesaid; if according to the Assise of the Forest they are replevisable, then in the mean Time deliver them the said* A. *and* B. *to bail to the twelve Men as aforesaid: And have you there the Names of the twelve Men, and this Writ.* Witness, *&c.*

If the Warden will not bail him, he shall have an *Alias* and *Pluries* against the Warden, directed unto the Sheriff, to attach him to answer before the King in his Bench, and shew wherefore he has not replevied him, *&c.* And in the same Writ it shall be contained, that he call to him the Verderors, to deliver him, who is so taken, in the Presence of the Verderors by good Bail, and that the Sheriff do deliver the Names of the Bail unto the same Verderors, to answer before the Justices in the next Eyre. And no Man shall be taken or imprisoned for Vert or Venison, if he be not found in the Manner, or indicted; in which Case he shall be set to bail by the Warden *ex Officio*, or otherwise by Writing as aforesaid. *Fitzherb. New Nat. Brev.* 154. *Hawk. Pleas of the Crown*, 2 *Book* 97.

Horn-Geld, A Tax within the Bounds of a Foreſt, for all Manner of horned Beaſts.

Hue and Cry, *i. e.* to cry out aloud, when a Foreſter, or any other Officer of the Foreſt, ſhall find any Perſons do or intending to do any Hurt or Damage to the Foreſt, and they fly for the ſame, they are forthwith to make an *Outcry* unto the Inhabitants and next Dwellers in the Foreſt where ſuch Perſons were ſeen, requiring them in the King's Name to aid and aſſiſt them to purſue ſuch Offenders from Town to Town, and from Village to Village, Place and Place, within the Limits and Bounds of the Foreſt, until they are taken. *Manwood* 182.

This *Hue and Cry* of the Foreſt, is properly to be made by the Foreſter himſelf, becauſe he is uſually a Perſon known in that Place, and the more likely to be followed; yet any other Officer or Miniſter of the Foreſt may make it; as appears by the *Aſſizes and Ordinances of the Foreſt. Artic.* 11. 'If 'any ſee any Miſdoers within the Bounds of 'the Foreſt to carry away any Deer, he ſhall 'do what he may to take him; and if he 'cannot, he ſhall levy *Hue and Cry*, and if 'he do not ſo, he ſhall ſtill remain in the 'King's Mercy. *Ibid.* 182, 409.

If after ſuch *Hue and Cry* made, any Perſon is negligent or refuſe to purſue the Offenders, then the Default of ſuch Perſon

or

or Persons, Township or Village, so offending, shall be presented by the Forester of the same Bailiwick at the next Court of *Swainmote*, or *Justice-Seat*, which shall first happen; and if after such Presentment, the Offenders shall be duly convicted according to the Laws of the Forest, they shall be fined. *Ibid.* 182, 183, 184. *Itin. Lanc. fo.* 7.

Hue and Cry is not to be made for every Trespass and Offence done in the Forest, but only for such as are done in hunting and destroying the wild Beasts of the Forest, as appears by the above recited *Assises of the Forest. Artic.* 11. 'If any see any Misdoers within the Bounds of the Forest to carry away any Deer, in such Case he is to make *Hue and Cry*; *viz.* after those who are Hunters and Takers of Venison, and not after such as commit Trespass in Vert.'

But some are of Opinion, that *Hue and Cry* is limited to be within the Bounds of the Forest; for by the same *Assizes*, *Artic.* 10. 'If any Man take a Deer in the Forest, without a Warrant, his Body shall be arrested wheresoever he be found within the Bounds of the Forest.' *Manwood* 216, 409.

If after such *Hue and Cry* made, and the People come to the Place where the Offenders are, if they resist and will not yield; or if they fly, and any Person who came in Assistance to the Forester, or other Officer,

ſhall happen to kill one or more of them *in the Bounds of the Foreſt*, either in apprehending or taking them or any of them, he ſhall not be arraigned for the ſame before the King and his Juſtices, or before any of the King's Bailiffs, or any other within any Franchiſe or without; neither ſhall he for ſo doing loſe either Life or Limb, or ſuffer any other Puniſhment, but ſhall injoy the King's Peace as before. *Manwood* 183. *Hawkins's Pleas of the Crown*, 1 *Book* 71. *Crom.* 30. *b.* *Dyer* 326. *pl.* 3. Vide *Table.*

Hunting, Is a Recreation and Pleaſure, which is common for any Man to uſe in his own Grounds. Sed Vide *Table.*

By **Stat.** 1 *H.* 7. *c.* 7. 'If any ſhall 'hunt within the Foreſts, Parks or Warrens 'in the Night-time, or diſguiſed, one of 'the King's Counſel, or a Juſtice of Peace, 'to whom Information thereof ſhall be 'made, ſhall by his Warrant cauſe the Of'fender to be brought before himſelf, or 'ſome other Counſellor or Juſtice of Peace, 'to be examined; where if he conceal the 'Fact, ſuch *Hunting* ſhall be deemed Fe'lony; but being confeſſed, the Offence is 'only fineable at the next General Seſſions. 'And here a Reſcous of the Execution of 'any ſuch Warrant ſhall be alſo deemed 'Felony.'

My Lord *Coke*, in his Comment on this Statute, ſays, That 'tis a general Law, and extends

extends to all Persons, of what Estate or Degree soever, and as well to Women as to Men; and that to *hunt disguised in the Day-time* is equally punishable as *hunting in the Night*, because the Offender cannot be known; but this Statute doth not extend to *Hunting in Chases*, nor to *Forests*, *Parks* or *Warrens*, *which are not really so*, *but only so reputed*. 3 Inst. 76.

The same great Lawyer in his 4th *Inst.* 309. says, That albeit *Spiritual Persons* are prohibited by the Canon Law to *hunt*, yet by the Common Law they may *hunt* for their Recreation, in Order to make them fitter to perform their Office and Duty.

A Subject who is Owner of a Forest may grant Warrants to *hunt* there, but no Man can give Licence to *hunt* in the King's Forests, but himself or his Chief Justice in Eyre, being within his Jurisdiction, or those who by some Grant from the King have a special Authority so to do. *Manwood* 189.

When a Man hath a Warrant to kill and carry away the Thing *hunted* and killed, in this Case he hath a Property in it, and his Warrant is called a Warrant of Profit, and he may *hunt* with what Company he will.

But where he hath no Property in the Thing *hunted* or killed, 'tis only a Licence of Pleasure, and he cannot *hunt* with any more than himself. *Ibid.*

He who hath a Warrant to *hunt*, &c. muſt purſue his Authority very ſtrictly, for if he doth not, he is a Treſpaſſer *ab initio*, and puniſhable. *Manwood* 186.

By **Stat.** 23 *Eliz. cap.* 10. 'Hunting 'is prohibited in ſtanding Corn.' See **Dogs.**

A Warrant or Summons on 23 Eliz. c. 10. *for* hunting *in ſtanding Corn.*

To the Conſtable, &c.

Suſſex, } WHereas *Complaint hath been to wit.* } *this Day made unto me* D. A. *Eſq;* [*one of his Majeſty's Juſtices of the Peace of the ſaid County,*] *That* R. B. *of the Pariſh of*, &c. *Gent. did, on the eighth Day of* June *laſt paſt*, hunt *with Spaniels in the Ground of* T. M. *and without his Conſent, there being then Corn ſtanding, growing and eared in the ſame Ground, by Reaſon whereof the ſaid* R. B. *hath forfeited the Sum of* 40 s. *to the ſaid* R. M. *the Owner of the ſaid Ground and Corn:* Theſe are therefore *in his Majeſty's Name to command you forthwith, upon Sight hereof, to warn the ſaid* R. B. *perſonally to come before me or ſome other Juſtice of the Peace of this County, to be examined concerning the Premiſſes.* Given, &c.

If

If the Offender doth not appear on the Return of this Warrant, then inſtead of theſe Words, [*to be examined*, &c.] ſay,

To give Bond with Sureties for his Appearance at the next General Seſſions of the Peace to be holden for this County, to anſwer the Premiſſes; and if he ſhall refuſe ſo to do, that then you ſafely convey him to the Gaol of, &c. and deliver him to the Keeper thereof: Commanding *you the ſaid Keeper to receive the ſaid* R. B. *into your Cuſtody, and him there ſafely to keep until he ſhall find Sureties as aforeſaid.* Given, *&c.*

Note, One Juſtice hath Power to examine and to bind over to the Seſſions where this Offence is to be tried upon an Information, if the Offence be not before heard and determined by Juſtices of Aſſize, Steward of Leets, *&c.*

Law Caſes.

Treſpaſs for *entring his Cloſe, and treading down his Graſs and Corn*, and *hunting* there, the Defendant being an *inferior Tradeſman*, (*viz.*) a Clothier; and the Plaintiff concluded his Declaration *contra pacem, &c. & contra formam ſtatuti inde edit' & provis'*; upon Not guilty pleaded the Plaintiff had a Verdict, and it was moved in Arreſt of Judg-

ment, that the Words *contra formam ſtatuti* go to the whole Declaration, whereas *the Entring his Cloſe, and Treading down his Graſs and Corn*, are not contrary to any Statute, but only the *Hunting*; and when that is done by an inferior Tradeſman, the Statute 4 & 5 *Will.* increaſes the Forfeiture to 5 *l.* or to any other Sum not exceeding 20 *s.* and beſides, it gives the Party grieved an Action of Treſpaſs, in which he ſhall recover his Damages and *full Coſts*; but adjudged, that where a Statute increaſes the Penalty, or deprives a Man of that Liberty, which he had by the Common Law; if the Plaintiff will declare upon ſuch a Statute, he muſt bring his Caſe within it, and then conclude *contra formam ſtatuti*, otherwiſe his Declaration will be ill; and this was *Penhallo*'s Caſe, 3 *Cro.* 231. 4 *Leon.* 49. But where there is no Statute in the Caſe, if the Plaintiff conclude *contra formam ſtatuti*, it ſhall not make his Declaration ill; for 'tis only Surpluſage, and that was *Ward*'s Caſe, 1 *Vent.* 102. 'Tis true, in the principal Caſe *Hunting* is only within the Statute; and though in a grammatical Conſtruction the Words *contra formam ſtatuti* will go to the other Treſpaſſes, which are not prohibited by any Statute; yet in a legal Conſtruction, thoſe Words ſhall be applied only to *Hunting*, which was really within the Statute; and as to the Reſt, they ſhall be

rejected

rejected as Surpluſage. *Bennet* againſt *Talbot*, 1 *Salk.* 212.

Treſpaſs for breaking his (the Plaintiff's) Cloſe, and entring and *hunting* there on ſuch a Day, *continuando* the Treſpaſs as to the *Hunting* at divers Days and Times, from the Day of the Treſpaſs, *&c.* to ſuch a Day; the Defendant pleaded Not guilty, upon which they were at Iſſue, and the Plaintiff had a Verdict; it was moved in Arreſt of Judgment, that *Hunting* is a Recreation which could not be laid with a *Continuando*, becauſe both Men and Dogs muſt have ſome Reſt from that Sport; 'tis true, there are ſeveral Facts which are permanent in their Nature, and thoſe properly lie in Continuance, but there are other Treſpaſſes which terminate in themſelves, and cannot be continued, as killing a Maſtiff, *&c.* But adjudged, that *Hunting* is not an Act which terminates in itſelf, and therefore it may be laid with a *Continuando* at divers Days and Times, between ſuch a Day, *&c.* *Monkton* againſt *Paſhley*, 2 *Salk.* 638. See the *Table*.

Inclosures. If a Chief Juſtice in *Eyre* will grant a Licence to a Man to *incloſe* his Ground in the Foreſt, paying a certain Rent, and ſuch Licence is made *ſedente curiâ*, ſitting the Court, it is good for ever, but not otherwiſe; for if it is not granted in Court, it may be pulled down again. *W. Jones Rep.*

277. But such *Inclosures* must be with low Hedges, which may not disturb the Game. *Manwood* 199.

Arable Land may be *inclosed*, but not with high Hedges, though Woods and Coverts in the Forest may be *inclosed* with high Hedges and Ditches, to preserve them from Hurt and Cropping by Cattle, until they are passed all Danger. *Manwood* 200.

Upon a Presentment against *John Taylor* for *Inclosing* a common Lane, he was fined 10 *s.* and to lay out the Lane: Mr. Attorney said, the Way for the King's *Hunting* ought to be as free as the Highway for Men's travelling. *W. Jones* 269.

Infant. If an *Infant* is impleaded before the Chief Justice in *Eyre* for a Trespass done in a Forest, he may appear in proper Person, and shew that he is under Age, and pray the Chief Justice that *J. P.* may be assigned for his Guardian; or if he doth not appear in Person, but the said *J. P.* for him, and sheweth he is an *Infant*, and prayeth he may be admitted his Guardian, the Court will admit him accordingly. *Manwood* 17.

If an *Infant* hath chosen his Guardian, who is afterwards sick, or will not appear before the *Justice-Seat*; yet if the *Infant* appears and prayeth *J. S.* may be admitted for him as *Prochein Amy*, he will also be admitted according to that Prayer. *Ibid.*

Judgment. If the Justice in *Eyre* give erroneous *Judgment*, the Party grieved may have a Writ of Error out of Chancery returnable in the King's Bench, and there Justice shall be done. 4 *Inst.* 297.

Jury. By **Stat.** 7 *Ric.* 2. *c.* 3. 'No Manner of *Jury* shall be from henceforth compelled by any Officer of the Forest, or other Person whatsoever, to travel from Place to Place out of the Places where their Charge was given to them, against their Gree, nor by Malice, or by Menace, nor other Dures, constrained to give their Verdict of a Trespass done in the Forest, otherwise than their Conscience will clearly inform them; but they shall give their Verdicts upon their Charge, in the Place where the Charge is given.' *N. B.* This Act extendeth to Forests only. 4 *Inst.* 314. Vide *Table*.

Justice-Seat, or *the Eyre of the Forest*, is a *Court of Record*, and though the Trespasses of Offenders are presented at the Court of Attachments, and afterwards those Offenders are upon such Presentments indicted at the Court of Swainmote, according to the Statute 1 *Ed.* 3. *c.* 8. and the Statute *de Ordinatione Forestæ*, yet those Courts cannot give Judgment, or assess any Fine, for that must be done at the *Justice-Seat*, and therefore the Rolls of such Offences, in both those Courts, are to be sealed with the Seals

of the Verderors, who are to keep them until the *Justice-Seat*, and then they are to present them to the Chief Justice in Eyre.

This Court may be proclaimed to be held within the Forest on such a Day; and at least forty Days before the Sitting thereof, 'tis usual to send out two Writs of Summons, one directed to the Sheriff of the County, and the other directed *Custodi forestæ Domini Regis, &c. vel ejus locum tenenti in eadem, &c.* which last Writ consists of two Parts; first to summon all the Officers of the Forest, and that they bring with them all the Records, *&c.* and secondly, all Persons who claim any Liberties or Franchises within the Forest, and to shew by what Authority they claim the same. 4 *Inst.* 291.

After forty Days Notice given by the Sheriff by Proclamation, of holding the Court of *Justice-Seat*, and after the Chief Justice in *Eyre*, and those in Commission with him, are come to the Place appointed, then the first Commission must be read, and the Officers called, and the Freeholders and all other Persons who were summoned to appear; then there must be a substantial Jury of Twenty-four, Twenty or Eighteen, chosen out of those Freeholders and others there present, who must be sworn truly to inquire and true Presentment make of all such Matters and Things, as shall be given them in Charge. *Manwood* 65.

For

For the Charge, *see Manwood* 65.

After the Court is sat, the Chief Justice may adjourn it to any Place within the County, and he may likewise take Recognizances any where; and a Presentment or an Indictment found by the Jury (but not in the Swainmote) may be traversed, because only *found by one Jury.*

The Proceedings are *de hora in horam*, and the Defendant must plead presently. *Wood's Inst.* 497.

Note, If a *Justice-Seat* be discontinued by the not Coming of the Chief Justice, it may be revived by the King's Writ. *Manwood* 78.

Keeper *of the Forest*, * Is an Officer who has the principal Government of all Things belonging to the Forest, and the Check of all the other Officers, called also the Chief Warden of the Forest; when the Chief Justice in *Eyre* of the Forest thinks fit to hold his Justice-Seat, he sends out his general Summons to the *Keeper* forty Days before, to warn the Officers, *&c.* to appear. See *Warden.*

Kipper-time, A Space of Time between the Festival of the Invention of the Holy Cross,

* Account lieth against him for the Deer, for he hath Possession as a Bailiff. 10 *H.* 7. *fo.* 30. *Kitchen* 119.

and carrying it away; nor shall constrain any to make Obligation of Ransom against his Will, and the Assize of the Forest, in Pain to pay the Party grieved double Damages, and Fine and Ransom to the King. 1 *Ed.* 3. *c.* 8. 7 *R.* 2. *c.* 4.

If any Forester or Keeper shall take any one *in the Manner*, then he may carry him to Prison, from whence he shall not be delivered, without a special Warrant from the King or the Chief Justice in *Eyre* of the Forest. *Manwood* 192.

The Punishment for being taken *in the Manner* is, by a judicial Sentence at the *Justice-Seat*, to be fined at the Discretion of the Lord Chief Justice, committed till he pays the Fine, and then and there to be bound to his Good Behaviour in the Forest for ever afterwards. *Ibid.* 193.

Dog-Draw, Is where a Man hath wounded a wild Beast, and is found with a Hound or other *Dog* drawing after him to recover the Beast so wounded.

Stable-Stand, Is where one is found at his *standing* ready to shoot any Deer, or *standing* close by a Tree with Grey-hounds in his Leash, ready to let slip.

Back-Bare, Is where a Man hath killed a wild Beast in the Forest and is found carrying him away.

Bloody-Hand, Is where one is found in a Forest in a suspicious *Manner*, and is Bloody. *Manwood* 193.

Mares. By Stat. 27 *Hen.* 8. *c.* 6. 'Every one, having Inheritance or Freehold 'in a Park kept for Deer, which is a Mile 'about, or his Farmer, shall keep two '*Mares* apt and able to bear Foals, each of 'them being thirteen Hands high from the 'lowest Part of the Hoof, to the highest 'Part of the Shoulder, and each containing 'four Inches, in Pain of 40*s.* for every 'Month they want them: And if the Park 'be four Miles about, they shall keep four 'such *Mares*, upon the like Pain.'

'If any of the *Mares* die, they have 'three Months given them to provide an-'other, without Danger of incurring the 'said Penalty.'

'They shall not suffer their *Mares* to be 'leapt by any Stone-Horse under fourteen 'Hands high, in Pain of 40*s.*

'The said Forfeitures are to be divided 'betwixt the King and the Prosecutor.'

'This Act shall not extend to *Westmor-'land*, *Cumberland*, *Northumberland*, nor Bi-'shoprick of *Durham*, nor to the Parks 'wherein the Inhabitants of the Town next 'adjoining have Common.'

'Spiritual Persons may sell the Increase 'and Breed of their *Mares*, notwithstand-'ing this Act.'

And by 32 *H.* 8. *c.* 13. (in Order to pre-serve the Breeding of strong Horses) no Stone-Horse above two Years old, and under

fifteen

fifteen Hands (every Hand four Inches) to be put into Forests where *Mares* are kept, upon Pain of forfeiting the Horse.

Marten, A Kind of wild Cat, and is a Beast of Chase. *Manwood* 50.

Mast, In *Sax.* Mæpt, is the Fruit of Wild-Trees; as Oak, Beech, &c.

Mast-time, Is the Season when *Mast* is ripe.

Mill. A Man may not build a *New Mill* in the Forest without Leave. *Manwood* 297.

Mower. By *the Assises and Customs of the Forests,* 'No *Mower* shall bring with 'him a great Mastiff to drive away the Deer 'of our Lord the King, but little Dogs to 'look to Things without the Coverts.'

Murder. The Lord *Dacres*, and *Mansfell* and others in his Company, came unlawfully to hunt in a Forest, and being resisted, one of the Company, when the Lord *Dacres* was a great Way off, and not present, killed a Man; and it was adjudged *Murder* in him and all the Rest. *Keil. Rep.* 87. *Moor* 86.

Malefactor. See **Receiver.**

Nets. By **Stat.** 1 *Jac.* 1. *cap.* 27. 'Every Person (not qualified) convicted by 'his own Confession, or Oath of two Wit-'nesses before two Justices, to keep a *Net* 'to kill Deer, Hare, Pheasant or Partridge, 'shall

'shall be committed for a Month without Bail, unless he immediately pay, to the Use of the Poor, where the Offence was committed, or where he was apprehended, 40 *s.* for every *Net*.'

By **Stat.** 7 *Jac.* 1. *c.* 11. 'Every Constable or Headborough, upon a Warrant under the Hands of two Justices, may search the Houses of Persons suspected to have any Setting Dogs or *Nets*, for taking Pheasants or Partridges, and may kill and cut in Pieces at Pleasure the Dogs and *Nets* there found, as Things forfeited to the said Officers.'

By **Stat.** 4 & 5 *W.* & *M.* *c.* 23. 'No Person shall keep a *Net*, Angle, Leap, Riches, for taking Fish, other than the Maker or Seller thereof, or Owner or Occupier of any River or Fishery; and that such Owner, &c. and such whom he shall authorise, may seise and keep such *Net*, &c. to their own Use, which shall be used or found in the Possession of any Person whatsoever, fishing in any River or Fishery, without the Consent of the Owner or Occupier; and any Person, by a Warrant from one Justice, may search the Houses and other Places of Persons prohibited, and suspected to have in their Custody any *Nets*, or other such Engines, and either to destroy them, or seise and keep them to his own Use.'

By

By **Stat.** 4 & 5 *Ann. c.* 21. 'No Person whatsoever shall keep any *Net*, Angle, *&c.* other than such as are allowed so to do by 4 & 5 *W. & M. c.* 23.

A Warrant to search for Nets *and Setting Dogs.*

[7 *Jac.* 1. *cap.* 11.]

To the Constable, *&c.*

Surry, } BY Virtue *of an Act of Parliament made in the seventh Year of the Reign of King* James *the First: These are (in his Majesty's Name) to authorise and command you to enter into and search the House or Houses of any Person or Persons (not being qualified) within your Precincts, suspected to have Setting Dogs or Nets, (for the taking of Pheasants and Partridges) and that wheresoever you find any such Setting Dogs or Nets, the same you take, carry away and detain, kill, destroy and cut in Pieces, as Things prohibited by the Act aforesaid, and forfeited to you, as shall find out and take the same as aforesaid: Hereof fail not at your Peril.* Given, *&c.*

A Warrant

A Warrant againſt one keeping fiſhing Nets, *and to ſearch for them.*

[4 & 5 W. & M. cap. 23.]

To the Conſtable, &c.

Norfolk, } WHereas *Complaint hath been made unto me, that the Fiſh in,* &c. *hath lately been deſtroyed by ſome idle, diſorderly Perſons not qualified by Law, either as having a free Fiſhery, or being Owners thereof, or otherwiſe lawfully authoriſed to fiſh in navigable Rivers; and that ſeveral Nets, Leaps, Pikes, and other Inſtruments and Engines are kept in the Pariſh of,* &c. *for the Deſtruction of Fiſh by Perſons who are not Makers or Sellers thereof, contrary to the Statute in that Caſe made and provided:* Theſe are therefore *to require you forthwith to enter into and ſearch the Houſes, Out-houſes, and other ſuſpected Places of Perſons within your Pariſh, or of ſuch who you are informed have any Nets or other Inſtruments for Deſtruction of Fiſh, and to ſeize the ſame where you ſhall find any ſuch, and likewiſe to bring the Perſon, in whoſe Houſe it ſhall be found, before me or ſome other Juſtice of the Peace for this County, to anſwer the Premiſſes.* And hereof fail not, &c.

Law

Law Cases.

An Information was brought againſt the Defendant upon the *Stat.* 2 *H.* 6. *c.* 15. for faſtening *Nets* upon the River *Thames* to Boats *Day and Night*, *ſo long as the Tide did ſerve*, and did not ſet forth, that it was continually *Day and Night*; but adjudged, that the Word *continually* in this *Statute* ſhall be taken to mean ſo long as the *Nets* faſtened may take Fiſh; and ſo long as the Time of fiſhing continueth. 12 *Rep.* 89.

Treſpaſs was brought againſt the Defendant for cutting the Plaintiff's *Nets* and Oars; who pleaded, that he was ſeiſed of a ſeveral *Fiſhery* in, *&c.* and that the Plaintiff with others indeavoured to row on the Water, and to catch Fiſh there with their *Nets*; and thereupon to preſerve his (the Defendant's) Fiſhing, he cut the *Nets*, *&c.* and upon a Demurrer to this Plea, the Plaintiff had Judgment; for the Defendant might have ſeiſed the *Nets* Damage-feaſant, and detained them, but cannot juſtify the Cutting them, which he may now do by Virtue of an Act of Parliament. *Reynell* againſt *Champernoon*, *Cro. Car.* 228.

The Defendant was indicted for fiſhing with a *Net* not exceeding two Inches and an Half in the Meſh; but this Indictment was quaſhed, becauſe it ſhould have been exceeding

ing two Inches and an Half. *The King* against *Hawkins*, 2 *Keb.* 635.

In *Warren*'s Case it was adjudged, that every Subject hath a Right or Liberty to fish with lawful *Nets* in any navigable River; and the King cannot deprive him of that Liberty, for he hath only a Right to Royal Fish. *Warren* against *Matthews*, *Modern Cases* 75.

Night. See **Foyest.**

Non-user. In all Cases where Liberty is granted of any Thing in a Forest, if the Grantee doth not use the same continually, and it appeareth so upon Inquiry, then the Liberty is to be seised, for *Non-user* is a good Cause of Seizure; as appears in the Case of the Abbot of *Rivall*. *Itin. Pickering* fo. 15, 17, 18. *Manwood* 93. But the *Non-user* of Parks or Warrens, is neither a Cause of Seizure or Forfeiture. *Manwood* 236, fol. 195.

Nusance *of the Forest.* Whatsoever tends to the Hurt or Destruction of the Forest, or of the *Vert* or *Venison*, or which tends to the Breach of those Laws made for the Preservation of them, the same is a *Nusance* of the Forest, and may be comprehended under these three Heads. 1. *Common Nusance*, 2. *Special Nusance*, 3. *General Nusance*.

Of the *Common Nusance*; this Sort of *Nusance* is a general Hurt, as well to the Inhabitants, as to the Beasts of the Forest; as suffering a Bridge to go to decay, so that

People

People are forced to go through the Forest, both to the Trouble of themselves, and the Disquiet of the Deer; the Erecting a Mill; stopping a Water-course, &c. *Manwood* 207, 208.

Of the *Special Nusance*; this tends chiefly to the Hurt of the wild Beasts of the Forest, and comprehends all Manner of Hunters and Trespassers, which in any Ways offend against the *Venison* or the wild Beasts, as by Hunting, or in any other Manner, to take and destroy them, or intending so to do. *Ibid.* 208.

Of the *General Nusance*; this Kind tends to the Hurt of the whole Forest, and as it may happen to the wild Beasts, it comprehends all Manner of Trespasses, which tend to the Waste, Hurt or Destruction of the *Vert*; the Consequence whereof is the Driving the Deer out of the Forest to other Coverts, which is a Hurt to them; for whatsoever tends to the Hurt of the *Vert* and *Venison*, tendeth to the general Hurt of the Forest itself. And this *Nusance* comprehends likewise all Surcharges of the Commons, Assarts, Purprestures, &c. *Ibid.* 208.

The Regarders of the Forest are to inquire into all the *Nusances*, and to make their Presentments and Certificates to the Verderors at the next *Swainmote* to be holden for the Forest, that the Offenders may be tried according to the Ordinances of the Forest: After

After such Offences are tried, the Proceedings are to be sealed up and kept by the Verderors, until the Coming of the Chief Justice in *Eyre*, and then cannot be traversed: At the Coming of the Chief Justice, all such who are convicted of any *Common Nusance* in the Forest, are to be committed, fined and bound to amend it by a certain Day. Such as are convicted of a *Special Nusance* are to be committed, ransomed, and bound to the Good Behaviour of the Forest; and such as are convicted of a *General Nusance* are to be committed, fined and bound to the Good Behaviour of the Forest. *Manwood* 209, 210, 211.

Officer. By **Stat.** 12 *Geo.* 1. *c.* 3. 'If any Officer or Soldier shall, without Leave of the Lord of the Manor under his Hand and Seal, take, kill or destroy any Hare, Coney, Pheasant, Partridge, Pigeon, or other Sort of Fowls, Poultry or Fish, or his Majesty's Game, and be convicted thereof, on the Oath of one or more Witnesses, before any Justice of Peace; every *Officer* shall for every such Offence forfeit 5*l.* to the Poor of the Place where, *&c.* and every Commander in Chief, for every such Offence committed by a Soldier under his Command, shall forfeit 20*s.* to be distributed in like Manner; and if on such Conviction, and Demand made by the Constable

'stable or Overseers of the Poor, such *Officer* 'shall not in two Days pay the said respec-'tive Penalties, he shall forfeit his Com-'mission, which is hereby declared void.'

Note; This Act was made for the better Preservation of the Game in or near such Place where *Officers* or Soldiers are quartered.

Outlawry. Offenders in Forests may be prosecuted by Way of *Outlawry*, *viz.* If a Man be indicted for any Offence done there, who lives in another County, and out of the Forest, so that he cannot be taken by the Foresters; in such Case the Offender may be *outlawed*, and the Proceedings against him are the same as at Common Law; and by Virtue of that *Outlawry* his Goods and Chattels are forfeited to the King, and so the Profits of his Lands found on Inquisition, *Manwood* 223, 224. See the *Table*.

If a Man is *outlawed* for an Offence either in the *Vert* or *Venison*, and afterward taken by a *Capias Utlagatum*, he shall be committed without Bail, to remain in Prison until delivered by a special Warrant from the King, or from the Chief Justice in *Eyre*, or Chief Warden of the Forest. *Ibid.* 224.

Pannage. See *Table*.

Park, (From *Parquer* to inclose, and in *Sax.* Deonpalb.) Is a great Quantity of Ground inclosed and privileged for wild Beasts

Beasts of Chase, by the King's Grant or by Prescription, and it is not (*a*) lawful for any Man to erect a *Park*, Chase or Warren, without a Licence under the Great Seal; for the Common Law gave no Incouragement to Matters of Pleasure, (wherein most Men do exceed) because they brought not Profit to the Common-wealth. (*b*) The Beasts of the *Park* or Chase, properly extend to the Buck, Doe, Fox, Marten and Roe, but in a common and legal Sense, to all Beasts of the Forest. (*c*) A *Park* must be inclosed, for if it lies open, it is a good Cause of Seizure into the King's Hands as a Thing forfeited; and the Owner cannot have an Action against those that hunt in his *Park*, if it lies open.

To a *lawful Park* three Things are required. 1. A Liberty, either by Grant or Prescription; 2. Inclosure, by Pale, Wall or Hedge; and 3. Beasts of a *Park*. 2 *Inst.* 199.

There are *Parks* in Use and Reputation erected without lawful Warrant, and such nominal *Parks*, having been used as *Parks* for a long Time, the Law doth (*d*) allow that the Owner may have an Action for killing his Deer therein; but whether they are

(*a*) 2 *Inst.* 199. (*b*) 1 *Inst.* 233. *a.* (*c*) *Wood's Inst.* 207. (*d*) *Ibid.*

Parks or not, in the Eye of the Law, yet they are Grounds incloſed, where Deer are uſually kept; and therefore Offenders therein are puniſhable by the *Stat.* 3 & 4 *W.* & *M. c.* 10. and others. See **Deer.**

Parks, as well as Chaſes are ſubject to the Common Law; and are not to be guided by the Foreſt Laws. 4 *Inſt.* 314.

A Man may have a *Park* in a Foreſt by Grant or Preſcription; but then it muſt be ſo incloſed, that the Beaſts of the Foreſt cannot enter; for if there is any Deer-leap, or it is not kept incloſed, it's a Forfeiture thereof. *Manwood* 210, 226.

Parks being laid open to Foreſts for forty Years may yet be incloſed again; and they may kill any Deer which come into thoſe *Parks:* So though Incloſures have been continued forty Years, if they were not before, they may be deſtroyed and laid open. 2 *Rep.* 155. *Manwood* 200.

By **Stat.** *Weſtm.* 1. *c.* 20. 'Treſpaſſers 'in *Parks* or Ponds ſhall give treble Damages to the Party grieved, ſuffer three 'Years Impriſonment, be fined at the King's 'Pleaſure, and give Surety never to offend 'in the like Kind again; and if they cannot 'find Surety, they ſhall abjure the Realm, 'or being Fugitive ſhall be outlawed.'

By **Stat.** 3 & 4 *W.* & *M. c.* 10. 'If 'any Perſon ſhall in the Night-time pull 'down or deſtroy, or cauſe to be pulled

'down

down or destroyed, the Pales or Walls of any *Park*, Forest, Chase, Purlieu, Paddock, Wood, or other Ground inclosed, where red or fallow Deer are kept, and thereof convicted by the Oath of one Witness, before a Justice of Peace, he shall by such Justice's Warrant suffer Imprisonment for three Months without Bail or Mainprise.'

By **Stat.** 5 *Geo.* 1. *c.* 15. 'Persons convicted by Confession, or Oath of one Witness, before a Justice of Peace, of pulling down, *&c.* the Pales, Walls, *&c.* of any Parks, Forest, *&c.* shall be subject to the Penalties inflicted by 3 *&* 4 *W. & M. c.* 10. for killing a Deer.' See **Deer**, and *Table*.

A Grant of a *Park* and Free Warren.

GEorge the Second, *by the Grace of God, of* Great Britain, France *and* Ireland *King, Defender of the Faith*, &c. **To all** *to whom these present Letters Patent shall come, Greeting:* **Know ye,** *that we of our special Grace, and of our certain Knowledge and meer Motion,* **have** *given and granted,* **and** *by these Presents do give and grant, for us, our Heirs and Successors, unto our well beloved Subject* R. C. *of*, &c. *the Liberty of one Park for wild Beasts, and also Free Warren in all his Demesne Lands of and within his Manor*

or Lordſhip of U. *with all Liberties which to ſuch* Park *or Warren do belong or appertain:* **To have,** *hold, injoy and exerciſe the ſaid Liberty of* Park *and Warren to the ſaid* R. C. *his Heirs and Aſſigns in all his Demeſne Lands aforeſaid.* **Provided** *that the ſame Lands be not within the Bounds of our Foreſt of,* &c. *ſo that no Man can enter into the ſaid Lands to hunt, or to take any Thing in them, which to a* Park *or Warren belongeth, without the Licence and good Will of the ſaid* R. C. *and his Heirs, under the Pain of forfeiting to us ten Pounds. Though or for that there is no expreſs Mention of the true yearly Value, or any Certainty of the Premiſſes, or any of them, or of any Grant or Grants heretofore to the ſaid* R. C. *by us, or by any of our Progenitors, appeareth to be made, or any Statute, Act, Ordinance or Proviſion, to the contrary publiſhed, made, provided, or any other Cauſe or Matter to the contrary notwithſtanding.* **In Witneſs** *whereof we have cauſed theſe our Letters to be made Patent.* **Witneſs** *ourſelf at* Weſtminſter *the fourth Day of* May *in the ſixth Year of our Reign.*

A Mittimus

A Mittimus for the pulling down and the deſtroying Pales of a Park, *in the Night-time; according to* 3 & 4 W. & M.

To the Conſtable of, *&c.* and to the Keeper of the Common Gaol, *&c.*

Bedford, } WHereas *Complaint hath been to wit.* } *made unto me, that* W. K. *of your Pariſh of,* &c. *did, on the third Day of* June *laſt paſt in the Night-time of the ſaid Day, pull down and deſtroy ſeveral Pales of the* Park *of Sir* R. F. *Bart. in the County aforeſaid, contrary to the Statute in that Caſe made and provided: And* whereas *the ſaid* W. K. *hath been duly convicted before me this preſent Day, upon Oath, of the ſaid Offence:* Theſe are therefore *to charge and command you to apprehend the ſaid* W. K. *and to convey him to the Gaol aforeſaid, and to deliver him to the Keeper thereof, together with this Warrant:* Commanding *you the ſaid Keeper to take him into your Cuſtody, and him ſafely to keep in the ſaid Gaol for the Space of three Months without Bail.* Given, *&c.*

A Warrant to levy 30*l. for pulling down the Pales of a* Park, *according to* 5 Geo. 1. c. 15.

To the Constable, *&c.*

Bedford, } WHereas N. B. *of*, &c. *hath*
to wit. } *this present Day been duly convicted before me, that he, on the sixth Day of* August *last past, did pull down* [or cause to be pulled down,] *three Pales of the* Park *of* H. M. *of*, &c. *in which* Park *red and fallow Deer are usually kept*; *and that the said* N. B. *committed the said Offence, contrary to the Statute in that Case made and provided, and without the Consent of the Owner, or the Person chiefly intrusted with the Custody of the said* Park, *by Reason whereof he hath forfeited* * 30*l.* These are therefore *to require you forthwith to levy the said* 30*l. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said* N. B. *and that you pay and dispose one third Part thereof to* H. J. *who first informed of the said Offence*; *and that you distribute another third Part thereof to and amongst the Poor of the Parish of* H. *where the Offence was committed*; *and that you*

* The Penalty inflicted by 3 & 4 *W.* & *M. c.* 10. for killing a Deer.

you pay the other third Part to the aforesaid H. M. *being Owner of the said* Park; *and if it shall happen that the said* N. B. *shall not have any Goods or Chattels within your Parish, sufficient to satisfy the said Forfeiture of* 30 l. *that then you certify me thereof, that such further Order may be taken therein, as is pursuant to the said Statute.* And hereof *fail not*, &c.

Commitment for Want of Distress.

[5 *Geo.* 1. *cap.* 15.]

To the Constable, *&c.* and to the Keeper of the Gaol of, *&c.*

Bedford, } WHereas *you the said Con-*
to wit. } *stable of*, &c. *was lately required by Warrant under my Hand and Seal to levy the Sum of* 30 l. *by Distress and Sale of the Goods of* N. B. *of*, &c. *by him forfeited, for an Offence which he committed against the Form of the Statute*, &c. And whereas *I have been certified by you, That you cannot find a sufficient Distress to be taken of the Goods and Chattels of the said* N. B. *for the Offence aforesaid:* These are therefore, *in his Majesty's Name, to require you to apprehend the said* N. B. *and to convey him safely to the Gaol of the said County, and deliver him to the Keeper*

thereof, together with this my Warrant for your so doing: Requiring *also you the said Keeper to take into your Custody the said* N. B. *and him safely to keep for the Space of one whole Year next insuing, and that then you deliver him to the Chief Officer of,* &c. *being the Town next adjoining to the Place where the Offence was committed, or some of the Under Officers, together with this Precept, who are required to set the said* N. B. *in the Pillory, in the said Town on some Market-Day, for the Space of one Hour.* And hereof *fail not, as you will severally Answer the contrary at your respective Perils.* Given *under my Hand and Seal,* &c.

Law Cases.

When the Owner of a *Park* dies, his Heir at Law shall have the Deer, because without them the *Park* which is his Inheritance, is no *Park*. 7 *Rep.* 17.

In Trespass for entring into a *Park*, Warren, &c. it is no Plea to say it is no *Park* or Warren, but he must plead *Not guilty*, and give the special Matter in Evidence. 10 *H.* 6. 16. 19 *H.* 8. 9. And therefore it is held clearly, that if one has a Warren, if he inclose or impark without the King's Licence, and another hunts there, and he bring Trespass *de Parco fracto*, the other may plead *Not guilty*, and give this Matter in Evidence.

Evidence. Sir *Matthew Hale*'s Notes on *Fitzherb.* 197.

One *Roger Wormale*, and *Rowland Triſtram* and *Thomas Banks*, two of his Companions, entered *Hyde-Park* with Arms to kill and ſteal the Deer in the *Night-time*; but being oppoſed by the Keeper and his Servants they ran away; but being purſued, one of them was wounded by a Shot, whereupon they all came back, and *Wormale* killed one of the Keeper's Servants; for which they being apprehended were all found guilty of Murder; becauſe they all came into the *Park* to do a premeditated and an unlawful Act, and the Event ſhewed their Malice extended to kill any Perſon that ſhould oppoſe them, they being all armed for that Purpoſe. *Palm.* 35. 2 *Roll. Rep.* 120.

Anno 15 *Ed.* 3. The Earl of *Lancaſter*, who was Lord of a Foreſt, granted to *John Harrington* that he might make a *Park* there; it was adjudged, that if the Grantee incloſe it ſo ſlightly that the Beaſts of the Foreſt might get in, this was a Forfeiture, and the Lord might enter ſuch *Park*, and take the Deer. *The King* againſt Sir *John Byron*, *Bridgm.* 26.

See **Diſpark** and *Table.*

Park-bote, Signifies to be quit of incloſing a Park, or any Part thereof. 4 *Inſt.* 308.

Parker, Is one that hath the Custody or Keeping of a Park.

A Grant of the Office of Parkership *of a Park.*

KNow all Men, &c. *That I* B. M. *Esq; Lord of the Manor of* M. *have given and granted,* **and** *by these Presents do give and grant to my faithful Servant* J. J. *the Custody or Office of Keeper of my Park of* M. *in the County of* G. **To have and to hold,** *occupy and injoy, the said Custody or Office of Keeper of my said Park by himself or Deputy, (for whom he shall be answerable to me,) for and during the natural Life of the said* J. J. *with the Wages of one Shilling and four Pence for every Day yearly, during his Life, to be paid to him by the Receiver, Bailiff or Farmer of the said Manor of* M. *out of the Rents and Profits of the said Manor, at the Feasts of,* &c. *by even and equal Portions;* **And** *also one Suit of Livery, such as my* Parkers *are wont to have, at the Feast of,* &c. **And I do hereby** *will and command the Receivers, Bailiffs and Farmers of my said Manor of* M. *both now and hereafter to be, that he or they, out of the Rents and Profits of my said Manor of* M. *do pay or cause to be paid unto the said* J. J. *or his Assigns, the aforesaid Wages of one Shilling and four Pence for*

for every Day at the Feasts aforesaid, by equal Portions, from Year to Year, during the Life of the said J. J. **Know ye also,** *that I have moreover given and granted, and by these Presents do give and grant unto the said* J. J. *Pasture for two Horses, and six Kine, within the Park aforesaid, during his Life as aforesaid, to be depastured, together with free Egress and Regress in and out of the said Park, without any Contradiction whatsoever.* **In Witness,** &c.

Law Cases.

If a Man grant by his Deed to another the Office of *Parkership* of a Park, to have and occupy the same Office for Term of his Life, the Estate which he hath in the Office, is upon Condition in Law, to wit, that the *Parker* shall well and lawfully keep the Park, and shall do that which to such Office belongeth to do, or otherwise it shall be lawful to the Grantor and his Heirs to oust him, and grant it to another if he will, but this Condition must be understood with a Distinction; for if the *Parker* doth not attend on the Park one or two Days, this is no Forfeiture of the Office of *Parkership*; but if in his Default any Deer be killed, and so a Damage to the Lord; that is a Forfeiture. For note this; *Non-user of itself, without some special Damage, is no Forfeiture of*

private

private Offices; *but Non-user of publick Offices, which concern the Administration of Justice, or the Common-wealth, is of itself a Cause of Forfeiture.* Lit. 378. 1 Inst. 233. a.

If a *Keeper* kill any Deer without Warrant, or fell or cut any Trees, Woods or Under-woods, and convert them to his own Use, it is a Forfeiture of his Office; for the Destruction of *Vert* is, by a Mean, Destruction of *Venison*; so it is if he put down the Lodge, or any House within the Park for putting of Hay into it for feeding of the Deer, or such like, it is a Forfeiture. 1 *Inst.* 233. *b.* *Benl.* 16. 4 *Leon.* 120. 1 *Anders.* 29. 9 *Rep.* 50, 95.

An Ejectment lies not of a Park, 1 *Cro.* 591. which is but a Liberty, as a Piscary, but must be by the Number of Acres. 2 *Keb.* 460. *Pemble* and *Ster.*

Partridge, Is a Fowl of Warren; and the *Statutes* which relate to *Partridges*, are the same that concern *Pheasants*, to which Head *I refer the Reader.*

A Warrant

A Warrant of Summons againſt one for deſtroying Partridge *out of Seaſon.*

[7 *Jac.* 1. *c.* 11.]

To the Conſtable, *&c.*

Surry, } WHereas *Complaint hath been*
to wit. } *made unto us* A. F. *and* T. F. *Eſquires, two of his Majeſty's Juſtices,* &c. *that* A. P. *of,* &c. *did at ſeveral Times with Nets,* &c. *kill and deſtroy ſeveral* Partridges *in,* &c. *between the Days,* &c. *being the Time prohibited by Law for doing thereof:* Theſe *are therefore to require you to apprehend the ſaid* A. P. *and to bring him before us, or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſſes and be dealt with according to Law.* Given, *&c.*

Declaration for entring the Plaintiff's Free Warren, and taking away his *Partridges.*

Suſſex, } J. K. *complains of* W. Y. *in the Cu-*
to wit. } *ſtody of the Marſhal, and ſo forth, for that the ſaid* W. *the fifteenth Day of* September *in the ſeventh Year of the Reign of the Lord the now King,* &c. *with*

Force and Arms, the Free Warren of him the said J. *at* S. *in the said County, broke, and in the same, against the Will, Licence and Consent of the said* J. *entered, and then and there took and carried away thirty Partridges, and other Enormities to him did, against the Peace of the said Lord the now King, and to the Damage of the said* J. *fifteen Pounds; and therefore he brings his Suit.*

Note; *Partridges* and Pheasants yield no Tithe of Eggs or Young; though they are tame and kept in a Place inclosed. *Wood's Inst.* 169. See **Pheasant.**

Pedage, Is Money given for passing through a Forest.

Peers. By **Charta Foreſtæ,** *cap.* 11. 'Whatsoever Archbishop, Bishop, Earl or 'Baron, coming to us at our Command-'ment, passing by our Forest, it shall be 'lawful for them to take and kill one or 'two of our Deer, by View of our Fo-'rester, if he be present, or else he shall 'cause one to blow an Horn for him, that 'he seem not to steal our Deer; and like-'wise they shall do returning from us, as it 'is aforesaid.'

Concerning this, it is to be observed, that before the Making this Charter, *Peers* could not hunt in the King's Forests without Warrant so to do; neither can they now, but when they are sent for to the Court by the

King's

King's Command, and in their Return home; and even then, four Things are to be ſtrictly obſerved, *viz.* 1. That he be either *Lord Spiritual* or *Temporal*. 2. That he be ſent for by the King. 3. That it be done by the View of the Foreſter, if preſent. 4. If he be abſent, that a Horn be blown for him. See *Table*.

Perambulation. The Subject may demand a Writ of *Perambulation* of Right, which the King in Juſtice cannot deny; and when a *Perambulation* is duly made, returned into *Chancery*, and proclaimed in the County, the ſame is peremptory and binding againſt the Subject: And if it was not duly made, the Subject cannot of Right claim or demand another, but the King may grant another *ex gratia*, and after the ſame is executed, it will take away the Force of the firſt. *Manwood* 45.

Form of a *Perambulation*.

THE Perambulation of the Foreſt of Waltham *in the County of* Eſſex, *made at* Chelmsford *on* Friday *the Morrow of the* Aſcenſion of our Lord, *in the 28th Year of the Reign*, &c. *before* R. H. W. T. S. G. *Juſtices of our Lord the King, to make the ſaid Perambulation, by the Oath of* R. S. H. B. J. H. S. W. &c. *who upon their Oath ſay, that*,

that, &c. [here set down the Meets and Bounds of the Forest, shewing what is within the Forest, and what is out of the Forest,] *according to the Tenor of the great Charter of the Forest.* In Witness *whereof we the said Jury have hereunto set our Hands and Seals the Day and Year above-written.*

Pheasant. The *Pheasant* is a Fowl of Warren.

By **Stat.** 11 *Hen.* 7. *c.* 17. * 'None 'shall take *Pheasants* or Partridges with Engines in another's Ground without Licence, 'in Pain of 10*l.* to be divided betwixt the 'Owner or Possessor of the Ground and 'the Prosecutor, to be recovered by Action 'of Debt, *&c.*

By **Stat.** 23 *Eliz. cap.* 10. 'None shall 'kill or take any *Pheasants* or Partridges 'with any Net or Engine in the Night-time, in Pain to forfeit for every *Pheasant* '20*s.* and for every *Partridge* 10*s.* which 'if the Offender pay not within ten Days, 'he shall suffer one Month's Imprisonment, 'and enter into Bond (for two Years only) 'with good Sureties, before some Justice of 'Peace, not to offend in the like.'

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* *Note*; The Act says, no Manner of Person or Persons of what Estate, Degree or Condition soever shall, *&c.*

'The

'The Forfeiture shall be recovered in any Court of Record, by Action of Debt, &c. and divided betwixt the Lord of the Liberty or Manor where the Offence is committed, and the Prosecutor; but in case the Lord shall dispence with the Offender, the Poor of the Parish are to have his Moiety, to be recovered by any of the Church-wardens.'

'Justices of Assise and Sessions, and Stewards of *Leets*, have Power to hear and determine these Offences; and one Justice of Peace may examine such Offender, and bind him over with good Sureties to answer it at the next General Sessions, if the Offence be not before determined at the Assizes, or in a *Leet*.'

'This Act shall not restrain Fowlers, which unwillingly take *Pheasants* or *Partridges*, and forthwith let them go at large.'

A Man was indicted on this Statute for taking Partridges *cum Retis*, but it was quashed, for it should be *cum Retibus* (with Nets). 3 *Bulst.* 71.

By **Stat.** 1 *Jac.* 1. *c.* 27. §. 2. 'Every Person convicted by his own Confession, or by two Witnesses upon Oath before two or more Justices of Peace, to have killed or taken any *Pheasant*, Partridge, Pigeon, Duck, Heron, Hare, or other Game, shall by the said Justices be committed to Prison without Bail, unless he

'immediately

'immediately pay to the Use of the Poor 'where the Offence was committed, or he 'apprehended, 20*s.* for every *Fowl* or *Hare* 'so killed; and after one Month's Com-'mitment, shall before two or more Justices 'of Peace be bound with two sufficient 'Sureties in 20*l.* a-piece, with Condition 'never to offend in the like again.'

'None shall sell, or buy to sell again, 'any Deer, Hare, *Pheasant* or Partridge, '(except *Pheasants* or Partridges by him 'reared up, or brought from beyond Sea,) 'in Pain to forfeit for every Deer 40*s.* 'Hare 10*s.* *Pheasant* 20*s.* and Partridge '10*s.* to be divided betwixt the Prosecutor 'and the Poor of the Parish where the Of-'fence is committed.'

'Justices of Assise and Sessions, and two 'or more Justices out of Sessions, have 'Power to hear and determine these Of-'fences.'

'This Act shall not restrain one licensed 'in open Sessions to kill Hawksmear, but 'then he must become bound by Recogni-'zance in 20*l.* not to kill any Game pro-'hibited by this Law; nor to shoot within '600 Paces of an Hernery, 100 Paces of 'a Pigeon-house, or in a Park, Forest or 'Chase, whereof his Master is not Owner.'

By **Stat.** 7 *Jac.* 1. *c.* 11. 'Every Person 'convicted by his own Confession, or by 'two Witnesses upon Oath, before two or

'more

more Justices of Peace, to have hawked at or destroyed any *Pheasant* or Partridge betwixt the first of *July* and the last of *August*, shall suffer one Month's Imprisonment, without Bail, unless he forthwith pay to the Use of the Poor where the Offence was committed, or he apprehended, 40*s.* for every Time so hawking, and 20*s.* for every *Pheasant* or Partridge so destroyed or taken.'

'If any Person of a mean Condition shall be convicted by his own Confession, or by one Witness upon Oath before two or more Justices of Peace, to have killed or taken any *Pheasant* or Partridge with Dogs, Nets or Engines, he shall by the said Justices be committed to Prison without Bail, unless he forthwith pay, to the Use of the Poor where the Offence was committed, 20*s.* for every *Pheasant* or Partridge so killed or taken; and also become bound, before one or more Justices of Peace, in a Recognizance of 20*l.* never to offend in the like Kind again.'

For the other *Statutes* relating to *Pheasants*, see *The Table*.

Law Cases.

In Trespass for taking *phasianos suos* in such a Place; upon Not guilty pleaded, the Plaintiff had a Verdict; and afterwards it

was

was moved in Arreſt of Judgment, that this Declaration was ill, becauſe the Plaintiff had declared for taking *phaſianos ſuos*, whereas *Pheaſants* are Birds *feræ naturæ*; and therefore the Plaintiff cannot have ſuch a Property in them, as to call them *ſuos*; but the Judgment was affirmed, becauſe after a Verdict it ſhall be intended that theſe *Pheaſants* were dead; and then the Plaintiff might have a Property in them. *Uſher* againſt *Buſhnell*, *Raym.* 16. *Sid.* 39.

Pond. By **Stat.** *Weſtm.* 1. *cap.* 20. 'Treſpaſſers in *Ponds* ſhall give treble Damages to the Party grieved, ſuffer three 'Years Impriſonment, be fined at the King's 'Pleaſure, and give Surety never to offend 'again in the like Nature; and if they cannot find Sureties, they ſhall abjure the 'Realm, or flying, they ſhall be outlawed.'

By **Stat.** 5 *Eliz. c.* 21. '*Ponds* by Day 'or Night unlawfully broken down; or Deſtroying the Head of any *Pond*, Moat or 'Dam, Stew or Pit where Fiſh are put, or 'wrongfully fiſhing in them, to the Intent 'to deſtroy, kill, take or ſteal any Fiſh 'againſt the Conſent of the Owner or Poſſeſſor, or not having lawful Authority ſo 'to do, and being convicted at the Suit of 'the King or the Party grieved, ſhall be 'impriſoned for three Months, and pay him 'treble Damages, and give Security for his 'Good Behaviour for ſeven Years, or remain

'in

'in Prison without Bail or Mainprise, till 'he do find Security.'

'The Party grieved shall in Sessions, or 'any Court of Record, recover treble Da- 'mages against the Delinquent, and on Sa- 'tisfaction shall have Liberty to procure his 'Release of the Behaviour.'

By **Stat.** 9 *Geo.* 1. *c.* 21. 'Any Per- 'son armed and disguised, and breaking 'down the Head of a *Fish-pond*, whereby 'the Fish shall be lost, or shall rescue such 'Offender, or procure another to join with 'him in such unlawful Act, is guilty of Fe- 'lony without Benefit of Clergy.' See *Table*.

* **Prescription.** The Form of a *Pre- scription* in the Forest, differs from a *Pre- scription* at Common Law; for a Claim, that he and his Ancestors *tempore quo*, is good, without saying, that he and his Ancestors, and all those whose Estate he hath in certain Lands. *Manwood* 232.

Though a Man may *prescribe* to hunt wild Beasts in his own Land, yet a *Prescription* is not good to hunt the King's wild Beasts, though they are in his own Land, *viz.* those which escape out of the Forest into the Purlieus. *Ibid.* 293. Vide *Table*.

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* Is a Title acquired by Use and Time, and allowed by Law.

Preſentment. Every *Preſentment* for an Offence done in the Foreſt, in *Vert* or *Veniſon*, muſt be certain in Reſpect of the *Perſon*, *Place*, *Thing*, *Inſtruments*, *Manner of the Act*, *Value of the* Vert.

1. In Reſpect of the *Perſon*; it muſt ſet forth the Name and Surname, and the Place where he dwelleth.

2. In Reſpect of the *Place*; it muſt ſet forth, that it was done in ſuch a Place within the Foreſt, that it may appear the Fact was committed therein.

3. In Reſpect of the *Thing*; it muſt ſet forth, that the Offender killed a *Buck* or *Doe*, or as the Caſe is.

4. In Reſpect of the *Inſtruments*; it muſt ſet forth, that the Offender entered the Foreſt with a *Croſs-bow*, *Long-bow*, *Gun*, *&c.* and did there kill a Deer.

5. The Manner of the *Act*, and the Value of the *Vert*, muſt be ſet forth as the Facts are.

There is ſome Variance between the Form of an Entry of a *Preſentment* in the *Swainmote*, and in the Court of *Attachments*; for in the *Swainmote* the Words are, *It is preſented by the Foreſters and the twelve Jurors, and convicted by the Verderors*, &c. but in the Court of *Attachments* thus, *It is preſented by* A. B. *Foreſter*, &c.

Preſentments made in Court of *Attachments* before the *Verderors*, and inrolled by them in the Rolls of the Foreſt, muſt be

thence transmitted to the Court of *Swainmote*, and the Offender may traverse such *Presentment* before it comes to the *Swainmote*, but not after; and a *Presentment* in the *Swainmote* is not traversable. *Manwood* 237, 238. Vide *Table*.

Principals. In Trespasses in Forests all are *Principals*. 4 *Inst.* 314. *Manwood* 214.

Property, Is either absolute or qualified, and a Man may have an absolute *Property* in several Things, which are not *feræ naturæ*, as in *Ducks*, *Poultry*, *Geese*, &c. but he cannot have such a *Property* in Things which are *feræ naturæ*, as *wild Fowl*, (viz.) *Partridge*, *Pheasants*, &c. and wild Beasts, such as *Conies*, *Hares*, &c. or *Fish* in the Sea or in Rivers; but he may have an absolute *Property* in other Things of a base Nature, such as *Grey-hounds*, *Hounds*, *Mastiffs*, *Spaniels*, &c. and for such Things, if taken away, an Indictment will lie for a Trespass, or the Party grieved may have an Action of Trespass, &c. and recover Damages. However a Man may have a qualified *Property* in Things which are *feræ naturæ*, which *Property* is possessory, and only for a certain Time, and may be obtained by Industry, (*viz.*) by taking such Creatures, and making them tame; and in such Case a Man may have a possessory *Property* in them, so long as they continue tame, and do not regain their natural Liberty.

Liberty. Likewise a qualified *Property* may be gained in Things *feræ naturæ*, by Reason of *Impotency and Place*, as of young Hawks or young Pigeons in their Nests bred in my Ground; for which I may have an Action of Trespass, if taken when they cannot fly. A qualified *Property* may also be gained in such Things, by Reason of a Privilege in a Park or Warren, as Deer, Conies, *&c.* Fish in a Trunk, or Pigeons in a Dove-house; but none of these Things can be properly called *suos*, because no Person hath an *absolute Property* in them, and therefore Felony cannot be committed by taking them away, unless reduced to be tame; though whilst they are wild, they do really belong to the Owner of the Park or Warren. 7 *Rep.* 17, 18. 11 *Rep.* 50. *Wood's Inst.* 314. *Cro. Car.* 553. *March* 48. Sed vide **Deer, Conies, Fish,** &c.

Pyoto-Foyester, Was one whom our ancient Kings used to make Chief of *Windsor Forest*, to hear Causes of Death or Maim, or of Slaughter of the King's Deer in the Forest.

Purlieu, From *Pur*, *i. e.* clear, intire, exempt; and *Lieu*, *i. e.* a Place: So that it is a Place intire or exempt from the Forest, though adjoining to the Forest, meered and bounded with unmoveable Marks and Boundaries, and known by Matter of Record only, and contains such Grounds as *Hen.* 2. *Rich.* 1.

Ric. 1. or King *John* added to their ancient Foreſts over other Mens Grounds, and were diſafforeſted by Force of the Statute of *Chart. Foreſt. c.* 1 & 3. and the * Perambulations and Grants thereupon: By this Deafforeſtation the Owners of the Grounds within the *Purlieu* may at their Will and Pleaſure fell, cut down, eradicate, and ſtub up all the Timber, Woods and Underwoods, convert their Paſtures, Meadows and other Grounds, to arable, incloſe them in with any Kind of Incloſure, build and erect new Edifices upon the ſame or any Part thereof, and to diſpoſe and uſe the ſame after the Diſafforeſtation, as if they never had been afforeſted. 4 *Inſt.* 303. *Manwood* 301.

Notwithſtanding the *Purlieu* is exempt from the Foreſt, yet the *Purlieu-man* is in ſome Caſes reſtrained; for he muſt not hunt in his own *Purlieu* in the *Night*, nor on a *Sunday*, nor in the *Fence-Month*, nor oftner than *three Days in a Week*; nor with any other Company, than his own Servants; nor forty Days *before* and *after* the *King's Hunting*; he muſt not *foreſtal* or hunt Deer out of Seaſon: All which has been taken for Law ever ſince *Purlieus* were firſt made. *Manwood* 297, 298, 299.

* By the Perambulation the *Purlieu* is made, for the *Purlieu* and the Perambulation are diſtinct Things, and the right Name of the Place diſafforeſted is *Purlieu.* 4 *Inſt.* 303.

Offences committed in the *Purlieus*, contrary to the Laws aforesaid, are accounted Offences of the Forest, because they are Injuries done to the wild Beasts there; and such Offences are to be presented by the *Rangers* at the next Court of *Attachments*, to be holden for the Forest adjoining to the *Purlieu*, or else at the next *Swainmote* or *Justice-Seat*, which shall first happen to be kept, that such Trespassers and Offenders in the *Purlieu* may be punished according to the Quality of the Offence, after a lawful Trial at the *Swainmote*; after such Trial had and Conviction of them, they are to be bound with good Sureties to the Good Behaviour of the Forest, until the next *Justice-Seat*, and then they are to appear there, and to be punished according to the Direction of the Lord Chief Justice in *Eyre*, either by Imprisonment, Fine or Ransom. *Ibid.* 300.

If a *Purlieu-man*'s Dog fastens on the Deer before he recovers the Boundaries of the Forest, and by Force and Strength of the Beast is drawn into the Forest, and there kills the Beast, the *Purlieu-man* may enter by Reason of the first Property which he had *ratione soli*, and by the Pursuit and Possession which he had by the fastening of his Dog, and may take and carry the Deer away. *Ibid.* 294. Vide *Table.*

Purlieu-men, Are those who have Grounds in the *Purlieus* of a Forest, and if duly

duly qualified according to Law, [See **Qualification**,] they may hunt in their own Grounds. *Manwood* 293.

Purprestures, In the King's Forests are of four Sorts. 1. *Purprestures against the King*; as where a Man doth new erect or build any Dwelling, or other House in the Forest without Licence. 2. *Against the King and Publick*; as where a Man builds a new House or Mill on the King's Highway, or Waste in the Forest. 3. *Against the King and a common Person*; as where a Man hath Land inclosed, lying in a Forest, and adjoining to the Waste of a Lord of a Manor, and the Owner incroacheth on that Waste, by removing a Hedge and taking in Part of it, and so wrongfully inlarging his own Ground. 4. *Against a common Person only*; as where a Man hath an ancient Dwelling-house, or other House in the Forest, and by inlarging it he incroacheth upon the Lands of his Neighbour. *Manwood* 304, 308.

Where a Man doth wrongfully incroach any Thing to himself in a Forest, either upon the King or any other Person, or doth take upon himself any Jurisdiction or Franchise there, without lawful Warrant, are *Purprestures*. *Ibid.* 209.

The Punishment of those who commit *Purprestures* is of two Kinds. 1. *Purprestures on the King's Land*, is to be committed without Bail until he paid a Fine to the

King, which Fine is arbitrary, at the Will of the Chief Juſtice, and the Place on which the *Purpreſture* was made, is to be ſurrendered to the King. 2. *On his own Lands*, is for the *firſt Offence* to be committed until he be delivered by ſix Pledges; for the *ſecond*, until he be delivered by twelve; and for the *third*, to be committed till he pay a Fine to the King, in which Caſe he is not bailable, but at the Diſcretion of the Lord Chief Juſtice in *Eyre*. *Ibid.* 210.

It is neceſſary, that in all Indictments or Preſentments for *Purpreſtures*, there be a ſufficient Certainty in theſe following Particulars. 1ſt, *Who* made the *Purpreſture*; in what Manner and when the ſame was done. 2d, *Where* the Ground lies in which it was made; in whoſe Tenure it is, and what Quantity the ſame doth contain, and what is the yearly Value thereof. 3d, *Whether* the *Purpreſture* was made on the Soil and Inheritance of the King, or of a common Perſon. 4th, *In* whoſe Fee the ſame is; in what Pariſh, and who hath the Inheritance. See *Table*.

Putura, Is a Cuſtom claimed by Keepers in Foreſts, and ſometime by Bailiffs of Hundreds, to take Man's-meat, Horſe-meat and Dog's-meat, of the Tenants and Inhabitants, within the Perambulation of the Foreſt or Hundred. 4 *Inſt.* 307.

Quail, The *Quail* is a Fowl of Warren. 1 *Inſt.* 233. *a.*

Qualification. By **Stat.** 13 *Rich.* 2. 'A Layman muſt have 40 *s. per Annum*; and a Prieſt 10 *l. per Annum*, otherwiſe he ſhall not keep or have any *Grey-hound*, *Hound*, *Dog*, *Ferret*, *Net* or *Engine* to deſtroy *Deer*, *Hares*, *Conies* or any other Gentleman's Game.'

By **Stat.** 1 *Jac.* 1. *c.* 27. 'A Man muſt have 10 *l. per Annum Inheritance*, or a *Leaſe for Life* of 30 *l. per Ann. or be worth* 200 *l. in Goods*, or be the Son of a Baron or Knight, or Heir apparent of an Eſquire, otherwiſe he ſhall not keep a *Grey-hound*, *Dog* or *Net*, to kill *Deer*, *Hare*, *Pheaſant* or *Partridge*.'

By **Stat.** 7 *Jac.* 1. *cap.* 11. 'Any Man, who is Lord of a Manor, or who hath a free Warren, or an Inheritance of 40 *l. per Annum*, or Freehold of 80 *l. per Annum*, *or Goods worth* 400 *l.* either by himſelf or his Servants by his Licence, to take *Pheaſants* or *Partridges* in the Day-time, *within their own Grounds or Precincts*, betwixt *Michaelmas* and *Chriſtmas*, and at no other Time.'

By **Stat.** 22 & 23 *Car.* 2. *c.* 25. 'Perſons not having Lands, or ſome other Eſtate of *Inheritance*, *of* 100 *l.* per Ann. *in their own or their Wife's Right*, *or for Life*, *or a Leaſe for ninety-nine Years of* 150 *l.*

' per Ann. *other than the Son and Heir of an* ' *Esquire, or other Person of some higher De-* ' *gree,* or Lord of a Manor, or Owners and ' Keepers of Parks, Chases, or Free War- ' rens stocked with Deer or Conies, shall ' not keep *Bows, Engines, Ferrets, Grey-* ' *hounds, Guns, Hare-pipes, Lowbels, Lur-* ' *chers, Nets, Setting Dogs, Snares* or *Tram-* ' *mels* for taking *Conies, Hares, Pheasants,* ' *Partridges* or other Game.

Rail, Is a Fowl of Warren. 1 *Inst.* 233.

Ranger. A *Ranger* is made by the King's Letters Patent, who alloweth every one of them a yearly Fee of 20 *l.* or 30 *l.* payable out of the *Exchequer*, and a Fee-Deer, both red and fallow, out of the Forest; his Office consists in ranging and walking about the *Purlieus*, to drive the wild Beasts safely into the Forests; and presenting all Offenders and unlawful Hunters, and what Trespasses they have done in the *Purlieus*, in their Walks.

And to the Intent that every *Ranger* should be the more careful to execute his Office, he must be sworn, and the Form of his Oath is as followeth.

The

The Oath of a *Ranger*.

YOU *ſhall well and truly execute the Office of a* Ranger *in the Purlieus of* W. *upon the Borders of the King's Foreſts of* W. *you ſhall rechaſe and with your Hounds drive back again the wild Beaſts of the Foreſt, as often as they ſhall range out of the ſame Foreſt into your Purlieus: You ſhall truly preſent all unlawful Hunting and Hunters of wild Beaſts of Venary and Chaſe, as well within the* (*a*) Pourallees, *as within the Foreſt, and thoſe and all other Offences you ſhall preſent at the next Court of Attachments or Swainmote which ſhall firſt happen.*

So help you God.

Note; In this Oath is contained the whole Office and Duty of a *Ranger*.

Ranſome, Is a Sum of Money paid for the Pardoning ſome great Offence, and ſetting the Offender at Liberty who was under Impriſonment.

Rape of the Foreſt, (*Raptus Foreſtæ*) Is Treſpaſs committed in the Foreſt by Violence.

(*a*) Perambulations.

Reafforested, Is where a Forest which had been disafforested, is again made a Forest.

Receiver. Whosoever *receiveth* within the Forest any Malefactor either in hunting or killing, knowing him to be such a Malefactor, or any Flesh of the King's Venison, knowing it to be the King's, is in this Case a principal Trespasser; but if the Receipt be out of the Forest, he cannot be punished by Laws of the Forest. 4 *Inst.* 317.

Reclaim, Signifies to make tame.

Reeve. The *Reeve* of every Town in the Forest, and four Men with him, must appear upon the first Sitting of the Justice-Seat, or the whole Vill shall be amerced; but if after Appearance and an Adjournment they or any of them make Default, then he or those who made such Default, shall be amerced. *W. Jones* 279. *Manwood* 15, 18.

Regarder, Is an Officer of the King's Forest, and is either made by the King's Letters Patent; by the Chief Justice in *Eyre*; or by the King's Writ to the Sheriff; but all the *Regarders* must be sworn by the Sheriff in the County-Court, by Authority of a Writ to him directed, before they can make the Regard of the Forest. *Manwood* 216, 219, 220.

The

The Oath of a *Regarder*, (containing his Office and Duty.)

YOU shall well and truly serve our Sovereign Lord the King in the Office of Regarder *of the Forest of* W. *you shall make Regard of the same Forest in such Manner as the same hath been accustomed to be made; you shall range throughout the whole Forest, and through every Bailiwick of the same, as the Forester there shall lead you to view the same Forest: And if the Foresters will not or do not know how to lead you to make the Regard or Range of the Forest, or that they will conceal from you any Thing that is forfeited to the King, you yourselves shall not let for any Thing, but you shall see the same Forfeiture, and cause the same to be inrolled in your Roll; you shall inquire of all Wastes, Purprestures and Assarts of the Forest, and also of the Concealments of any Offence or Trespass in the Forest, either in Vert or Venison, by any Officers of the same Forest: And all these Things you shall to the utmost of your Power do.*

So help you God.

There must be twelve *Regarders*, otherwise there cannot be any Regard made in the Forest; for if any under that Number should make a Certificate of their Inquisi-

tion, 'tis not a sufficient Charge against the Offender, for if eleven are agreed on a Verdict, 'tis not good if one disagree, and they must *see*, *view* and *inquire* the Certainty of every Offence given them in Charge; and when they find any Offences done, they are to write the same fairly on a Roll, and bring it either to the *Court of Attachments*, or *Swainmote*; at the first of which Courts all such Matters as are so found by the *Regarders*, they are to certify under their Hands and Seals, and present the same under their Hands and Seals to the Chief Justice in *Eyre* at the next *Eyre*; and such Regard ought to be made every third Year. *Manwood* 317, 320, 321, 324, 328.

Note; A Man cannot be a *Regarder* for any Forest but for the King's only. *Manwood* 324.

All Woods and Lands, which are Part of the Forest, are within the *Regard*; and all which are within the Bounds, and yet no Part of the Forest, are out of the *Regard*. *Ibid.* 43, 330. See the *Table*.

Replevin. If a Man hath a Park within the Bounds of any Forest, which is not inclosed according to the Assise of the Forest, *&c.* it shall be seised into the King's Hands; and then the Party shall have a special Writ of *Replevin*, to *replevy* the Park out of the King's Hands. *New Nat. Brev.* 154.

The

The Form of a *Replevin* of a Park within the King's Forest, seised for not being inclosed.

GEorge, &c. *To our faithful and well beloved* J. C. *Warden*, &c. *or his Deputy in the Forest of* W. *Greeting: We command you, that forasmuch as the Park of* A. B. *which is within the Meets of our Forest aforesaid, is seised, as it is said, into our Hands, for that it was not inclosed according to the Assise of the Forest; if according to the Assise of the Forest it is repleviable, cause Replevin to be made thereof to the said* A. B. *until the Coming of our Justice of our Forest into the County aforesaid.* Witness, *&c.*

Riding-Forester. His Duty is to lead the King in his Hunting. *W. Jones* 277.

Roe, Was a Beast of Chase, of which there are few or none now in *England*. *p.* 13.

Rolls. Sir *Richard Harrison* and Sir *Charles Howard* being Verderors, were for delivering up their *Rolls* in Paper, whereas they ought to be ingrossed in Parchment, fined 20*l.* a-piece. *W. Jones* 167. *Manwood* 331, 334.

Scotale, Is where any Officer of the Forest keeps an Alehouse, and by *Colour of his*

his Office causeth Men to come to that Alehouse in the Forest, to spend their Money; and this, as also *Extortion* by *Colour of his Office*, is prohibited by **Charta Foreſtæ**, *c.* 7. *Viz.* 'No Forester or Beadle from 'henceforth shall make *Scotale*, or gather 'Garb, or Oats, or any Corn, or Lamb, 'or Pig; nor shall make any Gathering, 'but upon the Sight, and upon the Oath of 'the twelve Regarders, when they shall make 'their Regard'. The Offence is to be inquired by twelve Jurors at the *Swainmote*; and if the Officer is attainted, he is to be punished and turned out of his Office. *Manwood* 168, 169, 334.

The Prohibition in *Charta Foreſtæ* aforesaid implies, That in some Cases *Scotales* may be lawful, *viz.* If they are found and presented upon the View of the Regarders, and upon their Oaths, when they make the Regard of the Forest, that such *Scotales* had a lawful Beginning, which must be either by *Tenure*, *Grant* or *Preſcription*; so that it may appear the Thing was lawfully done, by Right and good Title, and not newly and wrongfully exacted on the People by *Colour of the Office* of any such Officer. *Ibid.* 169, 170, 171, 335.

Sear-wood, Dead Boughs cut off from Trees in a Forest.

Staff-herding. The Ministers of the Forest are to inquire, whether those who claim

claim a Right of Common in a Foreſt, do uſe *Staff-herding*, *i. e.* Whether they uſe to have one to follow their Cattle; for that is not allowable of common Right, becauſe by that Means the Deer are frighted, which would otherwiſe feed with the Cattle; beſides he who looks after the Cattle will drive them into the beſt Paſture, and ſo the Deer will have only what is left: Therefore if any Man hath Right of Common, and under Colour thereof uſeth *Staff-herding*, his Common ought to be ſeiſed till he hath paid a Fine for the Abuſe. *W. Jones* 282. *Dean and Chapter of Salisbury*'s Caſe.

Stalking. By **Stat.** 19 *Hen.* 7. *c.* 11. 'No Perſon ſhall *ſtalk*, or cauſe any other 'to *ſtalk*, with any Buſh or Beaſt to any 'Deer in a Park, Chaſe or Foreſt, or without, except in his own Grounds, without 'Licence of the Owner, Maſter of the 'Game, or Keeper of the Foreſt, Chaſe or 'Park, on Pain of Forfeiture for every 'Time 10 *l.* to any Perſon who will ſue for 'the ſame by Action of Debt; and two Juſtices of Peace in Seſſions may examine the 'Offenders, and commit them to Priſon till 'they have ſatisfied the Forfeiture, whereof 'the ſaid Juſtices are to have the tenth 'Part.'

Steward. The *Steward* is a judicial Officer of the Foreſt, and muſt be one learned in thoſe Laws; he is to join with the Verderors,

Verderors, and direct them in their Proceedings, and to give the Charge at the *Swainmote*. 4 *Inst.* 310. *Manwood* 34, 340, 411. See the *Table*.

Stickler, An Officer formerly who cut Wood for the Priory of *Edcrose*, within the King's Park at *Clarendon*.

Surcharger, Is one who having Common in a Forest *surcharges* the same, *i. e.* puts more Cattle to depasture than he ought; in such Case, upon Complaint of the Officers of the Forest, that the same is so much *surcharged*, that there is not sufficient Pasture left for the Deer, a Commission may be directed out of *Chancery* to the King's Lieutenant of the Forest, and the Verderors and Chief Foresters there; commanding them to inquire by the Oath of good and lawful Men, what Number of Acres the Place doth contain, wherein the *Surcharge* is supposed to be made; and what Number of Beasts are commoning therein, and whose they are; and what Parishes, Villages and Hamlets ought of Right to have any Common there; and how many Messuages and Cottages there are in each of them; and how many Acres of Land do belong to every House: And then by computing how many Beasts may common in the same, leaving sufficient Pasture for the Deer, they shall rate and apportion every Man what Number of Beasts and of what Sort he may keep. *Manwood* 96.

A *Sur-*

A *Surcharger* of a Foreſt ſhall be indicted and fined for the ſame to the King, and impriſoned till paid. *Ibid.* 97.

Swainmote, A Compound of two *Sax.* Words, Swain, *i. e. Country Swain*, and Mote, *i. e.* a *Court*, is a Court of (*a*) Record preparative to the Juſtice-Seat held before the Verderors as Judges by the Steward of the *Swainmote* thrice in the Year, *viz.* the fifteenth Day after St. *Michael*, about the Feaſt of St. *Martin*, and fifteen Days before the Feaſt of St. *John Baptiſt*.

At this Court all the (*b*) Foreſters, (who are to preſent their Attachments,) and other Officers are obliged to appear, and ſo are the Freeholders within the Foreſt to be upon the Inqueſt or Jury, who are to (*c*) inquire of all thoſe who own Suit to the *Swainmote*; of Aſſarts, Purpreſtures, of taking away or removing Bounds; of making Mines or Clay-pits; of Mills, Houſes, *&c.* if there are more Foreſters or Walkers within the Foreſt than uſual; of Oppreſſions and Extortions by Officers; of ſurcharging Common; of burning Heath or Fern; and of all other Abuſes and Treſpaſſes in Vert and Veniſon.

(*a*) *Wood's Inſt.* 496. 4 *Inſt.* 289. (*b*) *Manwood* 339. (*c*) *Wood's Inſt.* 496. *Manwood* 340, 341, 342, 343. *Crompt. Jur.* 180, 181, 182, 183.

If

If at the *Swainmote* the Preſentment of the Foreſters is found true by the Jury concerning *Vert* or *Veniſon*, then the Offender ſtandeth convicted, and cannot (*a*) traverſe the Indictment.

Obſerve; This Court may inquire and convict, (*b*) but cannot give Judgment: Therefore a *Swainmote* without a Juſtice-Seat is of no Force. Vide *Table*.

Swan, Is a Royal Bird, and by **Stat.** 22 *Ed.* 4. *c.* 6. 'None (but the King's Son) 'ſhall have any Mark or Game of *Swans* 'of his own, or to his Uſe, except he have 'Lands and Tenements of Freehold worth 'five Marks *per Annum*, beſides (*c*) Repri-'ſes; in Pain to have them ſeiſed by any 'having Lands of that Value, to be divided 'betwixt the King and the Seizor.

The Reſolution in the Caſe of *Swans*, in 7 *Coke Rep.* 16. is, That all *Swans* ſwimming in a common River, which have gained their natural Liberty, may be ſeiſed for the King's Uſe, becauſe they are *Volatilia regalia*, but yet a Subject may have a Property in them, if ſwimming in his own River; and that if they get into a common River, he may retake them upon a freſh Purſuit. That *Cygnets* ſhall be equally divided between the Owners

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(*a*) 4 *Inſt.* 290. *Manwood* 340. *Wood's Inſt.* 497. (*b*) or 4 *Inſt.* 290. 2 *Bulſt.* 298. (*c*) Theſe are Duties Deductions which are yearly paid out of Lands.

Owners of the *Swans*; but that upon the River *Thames*, the Owner of the Lands next the River where the *Swans* have their Neſts, ſhall have the third Part of the *Cygnets* by Cuſtom. That a Man may preſcribe to have *wild Swans*, but not as it was done in this Caſe; for the Defendant ought to have ſet forth, that the *Abbot and Convent, &c. and all thoſe whoſe Eſtate they had, &c.* uſed to injoy all the Profits of *Swans, &c.*

Stealing *Swans* marked and pinioned, or unmarked, if kept in a Mote, Pond, or private River, and reduced to Tameneſs, is Felony. *Hawkins Pl. Co.* 1 *B.* 94. Like of young *Cygnets*. *Co.* 7. 27.

Note; No Fowl can be a Stray, but a *Swan*. 4 *Inſt.* 280. ſee *p.* 74 & 75.

Tithes. A Foreſt (though in a Pariſh) ſhall pay no *Tithes* while in the Hands of the King, but otherwiſe, if in the Hands of a Subject, or be diſafforeſted. 1 *Roll. Abr.* 655. 3 *Cro.* 94.

A Park pays *Tithe* of Deer and Herbage by Cuſtom; if converted into Tillage, it ſhall pay *Tithe* in Kind. *Wood's Inſt.* 169. ſee *Page* 197.

Triſtis, Is an Immunity, whereby a Man is freed from Attendance on the Lord of a Foreſt when he is diſpoſed to chaſe within the Foreſt; and by this Privilege, he ſhall not be compelled to hold a Dog to follow

follow the Chase, or stand at any Place appointed, which otherwise he is obliged to on Pain of Amerciament. *Jacob's Law Dict.* sub *Tit.*

Tunnels. By **Stat.** 4 & 5 *W. & M. cap.* 23. 'If any Person, not qualified by 'Law, do keep any Bows, Grey-hounds, 'Setting-dogs, Ferrets, Coney-dogs, Hays, 'Lurchers, Nets, *Tunnels*, Low-bells, Hare-'pipes, Snares, or other Instruments for 'Destruction of Game, and cannot give a 'good Account to a Justice, before whom 'he is brought, how he came thereby, or 'produce the Party of whom he bought 'them in some convenient Time, or some 'credible Person to depose upon Oath of 'the Sale thereof, he shall be convicted by 'the said Justice, and forfeit not under 5*s.* 'nor above 20*s.* to be divided between the 'Informer and the Poor of the Parish where 'the Offence was committed, to be levied 'by Distress and Sale, &c. and for Want 'of Distress to be committed to the House 'of Correction not exceeding one Month, 'nor less than ten Days, there to be whipt 'and kept to hard Labour. And if any 'Person shall not before the same Justice 'give such Evidence of his Innocency as 'aforesaid, he shall be convicted thereof in 'like Manner as the Person first charged 'therewith is hereby directed to be con-'victed; and so from Person to Person, till 'the

the first Offender shall be discovered.' See *p.* 140 & 142.

Tradesman. See **Apprentice.**

Venison, Is one of the greatest Ornaments of the Forest, and is a Word of Art, proper only to Beasts of Forest or Chase; and Lord *Coke* in his 4 *Inst.* 316. says, That whatsoever Beast of the Forest is for the Food of Man, is *Venison*, and whatsoever Beast of the Forest is not for Food of Man, is no *Venison*. See *Table*.

Verderor, Is a judicial Officer of the King's Forest; and he is to observe and keep the Assises or Laws of the Forest, and to view, receive and inrol the Attachments and Presentments of all Manner of Trespasses of the Forest in *Vert* and *Venison*, and to do equal Right and Justice as well to the Poor as to Rich.

Upon a Certificate made to the King in his Court of *Chancery*, That *T. B.* one of the *Verderors* of the Forest of *D.* is dead, there is granted a Writ *de Viridario Eligendo*, directed to the Sheriff of the County where the Forest is, thereby commanding him, in his full County, to choose another, *Manwood* 349. in the same Manner as Coroners. *New Nat. Br.* 366.

The

The Form of the Writ.

GEorge the Second, *&c. To our Sheriff of* Glouceſter, *Greeting. Becauſe* T. B. *late one of our Verderors of our Foreſt of* D. *is dead, as we are informed, therefore we command you, if ſo it is, that then in your full County, with the Aſſent of the ſame County, you cauſe to be elected one other* Verderor *in the Place of the ſaid* T. B. *who will upon his Oath take the ſame, as is cuſtomary, to do, obſerve and execute, what belongs to the Office of* Verderor *in the Foreſt aforeſaid; nevertheleſs cauſe to be elected him who is beſt knowing and able to execute that Office, and let his Name be known to us.* Witneſs, *&c. F. N. B.* 164, 166.

When he is elected, the Sheriff muſt ſwear him as follows:

The Form of the Oath, and which points to him out his Office and Duty.

YOU *ſhall well and truly ſerve our Sovereign Lord the King in the Office of a* Verderor *in the Foreſt of* D. *you ſhall, to the uttermoſt of your Power, do the beſt you can for the Profit of the King, ſo far as it doth appertain for you to do; you ſhall preſerve the antient*

antient Rights and Franchiſes of the Crown; you ſhall not conceal from his Majeſty any Right and Privileges, nor any Offence in Vert or Veniſon, nor any other Thing: You ſhall not withdraw or abridge any Default, but ſhall indeavour yourſelf to manifeſt and redreſs the ſame, and if you cannot do that of yourſelf, you ſhall give Knowledge thereof to the King, or his Juſtice of the Foreſt. You ſhall deal indifferently with all the King's Liege People: You ſhall execute the Laws of the Foreſt, and do equal Right and Juſtice, as well unto the Poor as to the Rich, in that appertaineth to your Office: You ſhall not oppreſs any Perſon by Colour thereof, for any Reward, Favour or Malice; all theſe Things you ſhall, to the utmoſt of your Power, obſerve and keep;

So help you God.

The Perſon thus choſen ought to be an Eſquire, or Gentleman of good Eſtate, and learned in the Foreſt Laws; and becauſe he is choſen in ſome Manner as a Coroner; ſo in ſome Reſpects his Office is alike, for as a Coroner is to make Inqueſt *upon the View of the Body*, and upon the Oath of twelve Men, how in what Manner the Perſon was killed; ſo a *Verderor*, upon Notice given, is to view the Deer, which are killed or hurt, and to take an Inquiſition *by four of the next Villages to the Foreſt*, how and by whom they were killed; which Inquiſition ſhall be written in the

the Roll; the Finder shall be put by six Pledges, and the Flesh shall be sent to a Spittle-House, if by the Testimony of the *Verderors* and Country there be any nigh; but if there be no such House nigh, the Flesh shall be given to the Poor and Lame; the Head and Skin shall be given to the next Town, and the Arrow, if there be any found, shall be presented to the *Verderor*, and inrolled in his Roll. *Note*; If the Deer is fit to be eaten by the better sort of People, 'tis then to be disposed of at the Pleasure of the Justice of the Forest. *Manwood* 350. *The Assises of the Forest* 7. *Manwood* 409.

There are usually in every Forest four *Verderors*; they are liable to be removed for Transgressions, but if the Suggestion is false, on Certificate thereof, and Commission out of Chancery, the Sheriff by Writ is to restore him. *Manwood* 352. *Fitz. New Nat. Brev.* 383.

By *Assises and Customs of the Forest*, *c.* 21. 'When *Verderors* have taken an Inquest, 'one shall set to his Seal, and the other keep 'the Roll; and so from Time to Time till 'the Coming of the Justice: Then the first 'Day he and all the Ministers shall present 'the Roll, or else they shall be amerced, 'and Mainprisors that Day shall be preferred 'for the Forest, or else they shall incur a 'Seisure.'

If

If a *Verderor* dies, his Heir is to bring in the Roll of his Anceſtor's Time. 4 *Inſt.* 312. See *Rolls*.

If the *Verderor* alien his Land or die ſeiſed, and no Man bringeth in the Rolls, then the Land ſhall be ſeiſed by the Sheriff, which the *Verderor* had, until the Rolls be brought in: And if the Rolls be loſt, then till he make his Fine, and have his *Ouſter le Main*, *i. e.* a Livery of his Lands out of the King's Hands. *Ibid.* See the *Table*.

Vert, *Green-Hue*, Is one of the principal Ornaments of the Foreſt, (and *Veniſon* is the other) and is every Tree, Under-wood, Buſh, and ſuch like growing in a Foreſt, and bearing green Leaves, which may cover or feed the Deer, and is of three Sorts, *viz. Over-Vert*, which is great Woods and Trees, as well thoſe which bear no Fruit as thoſe which do. *Nether-Vert*, which is properly all Manner of Under-woods, Buſhes, Thorns, *&c.* and *Special-Vert*, which may be either *Over* or *Nether Vert*, or both if it bears Fruit, for nothing is accounted *Special Vert*, but ſuch which beareth Fruit to feed the Deer, unleſs it is in the King's Demeſne Woods, and then every Tree which grows therein, whether great or ſmall Wood, or whether it beareth Fruit or not, is accounted *Special Vert*, and is privileged in a particular Manner; and therefore the Offenders in this Kind of *Vert*, which is the *King-Vert*, are more

more severely punished than those who offend in the *Vert of other Men*; for whosoever cuts this *Vert*, and carries them away with Cart and Horses, *&c.* both Cart and Horses, *&c.* are forfeited to the King, and the Offender shall be fined to the Value of the Wood. 4 *Inst.* 317. *Manwood* 354, 355, 356, 357, 358.

The *Vert of common Persons* is the *Over-Vert*, *Nether-Vert* and *Special-Vert*, that are not in the King's Woods; and by the *Assises and Customs of the Forest*, *cap.* 1. 'If any 'Forester shall find any Man attachable for 'Vert in the Forest, first he shall attach 'him by two Pledges, if they be to be 'found; if not, he shall be brought to the 'next Town where they may be found; and 'if he be afterwards found, he shall attach 'him by four Pledges; and if the third 'Time he shall be presented before the Ver-'derors, and be put by eight Pledges; and 'after the third Attachment, his Body shall 'be attached and retained, that he may 'remember what Thing *Vert* is.' *Manwood* 359, 407.

If any Man offend in cutting down *Vert* in the Forest, and dieth after it is presented; yet the King shall be answered for this Trespass, either by the Heirs of the Deceased, or by the Tenant of his Land. *Assise Pickering*, *fo.* 22. *Manwood* 360.

Viſne. A *Viſne* may come from a Foreſt, and ſo it may from a Park, but not from a Walk in a Foreſt. *Hawk. P. C.* 2 *Book*, 183.

Vivary, Signifieth a Place in Land or Water, where living Things are kept; and moſt commonly in Law ſignifieth Park, Warren, Piſcary, *&c.* 2 *Inſt.* 100.

Walkers, Foreſt Officers appointed to walk about a certain Space of Ground committed to their Care.

Warden of the Foreſt. The *Chief Warden of a Foreſt* is an Officer of great Authority, and next to the Chief Juſtice in *Eyre*, in order to bail and diſcharge Offenders out of Cuſtody, who are impriſoned or indicted for Offences in the Foreſt; but he is not a judicial Officer, becauſe he may make a Deputy by the Foreſt Law, and where-ever there is a *Caſtle* in a Foreſt, the *Conſtable of that Caſtle* is always *Chief Warden*, as the Conſtable of *Windſor* Caſtle is always *Chief Warden* of that Foreſt. 4 *Inſt.* 313.

By **Stat.** 1 *Ed.* 3. *Stat.* 1. *c.* 1. 'If 'any Perſon is taken in the very Act, and 'impriſoned or indicted for the *Vert* or *Ve-'niſon*; the Chief *Warden* of the Foreſt 'ſhall let him to Mainpriſe until the Eyre, 'without taking any Thing for his Delive-'rance; which if he refuſe to do, then the

'Party grieved ſhall have a Writ out of the 'Chancery, of old ordained for Perſons in-'dicted to be bailed till the Eyre; and that 'if upon the Service of ſuch Writ, the '*Warden* will not deliver the Perſon indicted 'to *Mainpriſe*, then he ſhall have another 'Writ out of the Chancery, directed to 'the Sheriff of the County, *&c.* to attach 'the *Warden* to anſwer his Default before 'the King at a certain Day; and then the 'Sheriff (having called the Verderors to him) 'ſhall deliver the Perſon indicted by good 'Mainpriſe, in the Preſence of the ſaid Ver-'derors, and ſhall deliver the Names of the 'Mainpernors to the ſame Verderors, to 'anſwer in the Eyre before the Juſtices. 'And if the Chief Warden be thereof at-'tainted, he ſhall be awarded to pay treble 'Damages to the Party grieved, and be 'committed to Priſon, and be ranſomed at 'the King's Will.'

'And from henceforth it ſhall be written 'to him as to the Chief *Warden of the Foreſt*, 'becauſe he may not be Juſtice, nor have 'any Record but in the Eyre.'

If the *Warden* of the Foreſt die, and his Heir or Tertenant bring not in the Rolls, *&c.* his Heir or Tertenant ſhall anſwer for the ſame. 4 *Inſt.* 313.

Warrant. See **Hunting.**

Warren. A (*a*) Warren is a Franchiſe or Liberty by Grant of the King, or by Preſcription, for the Preſervation of Beaſts and Fowls of *Warren* only. (*b*) Beaſts, as Hares, Conies, *&c.* Fowls, as Partridge, Pheaſant, Quail, Rail, Wood-cock; or Water-Fowl, as Mallard, Hern, *&c.* (*c*) A Chaſe, Park or *Warren* are collateral Inheritances, and not iſſuing out of the Soil as Common doth. (*d*) A Free *Warren* may lie open, for there is no Neceſſity of incloſing it; and one may have a *Warren* in another's Land; for the Grantee may alien the Land and reſerve the Franchiſe. (*e*) But no one can make a *Warren* appropriate thoſe Creatures that are *feræ Naturæ*, without the King's Licence.

Note; An Ejectment doth not lie of a Warren. 1 *Keb.* 506.

A Warrant for unlawfully entring any *Warren*.

[22 & 23 *Car.* 2. *c.* 25.]

Somerſet, } WHereas *an Information is*
to wit. } *laid before me, (being one of his Majeſty's Juſtices of Peace for this*

(*a*) *Manwood* 362, 363. (*b*) 1 *Inſt.* 233. *a.* (*c*) 4 *Inſt.* 318. (*d*) *Wood's Inſt.* 208. (*e*) 2 *Inſt.* 199. 11 *Rep.* 87.

County) *by* W. L. *of*, &c. *Warrenor*, *that* J. D. *of*, &c. *did wrongfully enter into his* Warren *or Ground*, *lawfully uſed or kept for Breeding or Keeping of Conies*, *and did then and there chaſe*, *take or kill Conies againſt the Will of the Owner or Occupier thereof*, *not having any Title or lawful Authority ſo to do: Theſe are therefore to require you*, *on Sight hereof*, *to bring the ſaid* J. D. *before me to ſhew Cauſe*, *why the Penalty of the Act of Parliament ſhould not be levied on him for his Offence*. Given, *&c.*

A Warrant to levy the Penalty.

To the Conſtable of, *&c.* and to the Keeper of, *&c.*

Somerſet, } WHereas J. D. *of*, &c. *is*
to wit. } *lawfully convicted before me*, (*being one of his Majeſty's Juſtices of the Peace for this County*) *by the Oath of one Witneſs*, *of his wrongfully entring into the* Warren *of* W. L. *lying in the Pariſh of* S. *in this County*, *on*, &c. *and then and there did chaſe*, *take or kill Conies*, *againſt the Will of the ſaid Owner or Occupier thereof*, *the ſaid* J. D. *not having Title or lawful Authority ſo to do: Therefore I do hereby Order that the ſaid* J. D. *ſhall preſently pay to the ſaid* W. L. *the Sum of*, &c. *being treble Coſts and Damages*; *and*

you

you are hereby required to convey the said J. D. *to the Gaol at*, &c. *for the said County, and deliver him to the Keeper thereof: And you the said Keeper are hereby commanded to keep him the said* J. D. *in safe Custody for the Space of three Months.* Given, *&c.*

Law Cases.

Where a Man is seised of a Manor, in which he had a *Warren*, and made a Feoffment of the said Manor *cum pertinentiis*; it was held, that the *Warren* did not pass, because 'tis a collateral Inheritance, and doth not issue out of the Soil; but this Case is denied to be Law, for it hath been since adjudged, that by a Grant of a Manor *cum pertinentiis*, the *Warren* will pass. *Bro. Abr.* Tit. *Warren.* 4 *Inst.* 318.

T. S. had a *Warren* in another Man's Land, and afterwards he granted the said *Warren* to *E. G.* Adjudged, *that by the Grant of the* Warren *the Soil did not pass*, probably for the Reason mentioned in the last Case, (*viz.*) because a *Warren* is a collateral Inheritance, and doth not issue out of the Soil. 3 *Bulst.* 82. *Cro. Eliz.* 547. S. C.

So where one Man was Lord of the Manor of *H.* in which Manor another Man had a *Warren* belonging to the Manor of *D.* and afterwards both these Manors came into one Hand, by the Purchase of the Manor of

D. Adjudged, that by the Union of the Land and the *Warren*, that the *Warren* was not extinct but ſtill remained. Lord *Mounſon*'s Caſe, *Cro. Car.* 4 *Inſt.* 318. So adjudged in the Caſe of a *Chaſe*.

If a Man ſprings a Pheaſant on his own Land, and his Hawk flies at it, and purſues it into the *Warren* of *T. S.* the Owner of the Hawk cannot juſtify the Entry into the *Warren*, and taking both the Hawk and Pheaſant; but 'tis otherwiſe if the Soil was not a *Warren*. 2 *Roll. Abr.* 567.

Sir *Richard Harriſon* claimed a *Warren* by Preſcription in *Windſor* Foreſt, and the Attorney General *Noy*, at a Juſtice-Seat held for the Foreſt, affirmed that the Claim was not good, unleſs it had been *allowed in Eyre*; and therefore he being preſented for the *Warren* was fined 10*s.* and it was ordered, that the *Warren* ſhould be deſtroyed. Sir *Rich. Harriſon*'s Caſe, *W. Jones* 280. Vide *Conies*.

Waſte, Signifies a Spoil and Deſtruction in the Covert and Paſtures of the Foreſt.

If a Man on his own Inheritance fell or cut down any Wood, which grows ſcattering, or any thick Covert in the Foreſt, without Licence of the Chief Juſtice in *Eyre* or View of the Foreſters, 'tis Waſte. *Manwood* 366.

There is a Difference between *Deſtruction* and *Waſte* in a Foreſt; for every *Deſtruction* of

of the Covert is *Waſte*, and perpetually ſo; but every *Waſte* is not *Deſtruction*; for a Man may fell his Woods and deſtroy the Covert for a Time, and by preſerving the Fences, the ſame may be Covert again. *Ibid.* 366.

If a Man hath a Licence to fell Woods which are Coverts in a Foreſt, and he felleth them, but doth not make Fences to preſerve the Sprouts, ſo that they are eaten and deſtroyed by the Cattle, that they never grow again, this is *Waſte* and *Deſtruction*; and ſo it is if he fell them at unſeaſonable Times, and they die. *Ibid.* 367.

He who commits *Waſte*, either by felling Trees or deſtroying any Covert or Wood, is to be fined by the Chief Juſtice in *Eyre*, and the whole Wood or Place ſo *waſted* ſhall be ſeiſed to the Uſe of the King; and ſo it ſhall remain till the Owner hath paid the Fine; and if the Offender dies before any Preſentment be made of the Offence, yet the Heir ſhall be fined, and the Land ſeiſed till he pays the Fine; and the like Law is when the *Waſte* is done by plowing any Meadow. *Anno* 8 *Ed.* 3. *Aſſiſe Pickering*, *fo.* 22. *Manwood* 368.

The Fine in theſe Caſes is neither certain nor altogether arbitrary, becauſe the Number of Acres contained in the Place *waſted* is mentioned in the Indictment or Preſentment, and uſually the Chief Juſtice in *Eyre*

doth assess the Fine according to the Number of those Acres; and not only according to the Number, but the Value of such Acres *wasted* is likewise set forth in the Indictment, in which Indictment these Things are specially to be considered. 1. Who made the *Waste*. 2. What Manner of *Waste* is done. 3. When it was done. 4. Where the Ground is, in which it was done. 5. In whose Tenure it was at that Time. 6. What Number of Acres it doth contain. 7. What every Acre is worth to be sold. 8. Whether it be *Waste* or *Destruction*, or both. 9. In whose Fee it is, and in what Parish. 10. Whose Inheritance it is. *Manwood* 369.

If the King pardons Transgressions in a Forest, this doth not pardon the *Waste*. Sir *Walter Tichburne*'s Case, *Iter Windsor*. *W. Jones's Rep.* 279. see *p.* 125.

Wear. By **Stat.** 11 *Hen.* 7. *cap.* 5. 'Every Man may pull down the *Wears* and 'Engines in the Haven of *Southampton*, be-'tween *Calshord* and *Redbridge*; and whoso-'ever levieth any other there shall forfeit '100*l.* to the King. Vide *Table*.

Wild-Duck, &c. By **Stat.** 9 *Ann.* *c.* 25. 'If any Person between 1 *July* and '1 *September* in any Year, shall by Hays, 'Tunnels or other Nets, drive and take any '*Wild-Duck*, Teal, Widgeon or any other 'Water-Fowl, in any Places of Resort for 'Wild-Fowl, in the Molting Season, the Offender

'Offender being convicted thereof before 'one Juſtice of the Peace where the Offence 'ſhall be committed, and by the Oath of 'one credible Witneſs, ſhall forfeit 5 *s.* for 'every Fowl, one Moiety to the Informer, 'the other to the Poor of the Pariſh where 'the Offence was done, to be levied by a 'Warrant of the Juſtice before whom the 'Offender was convicted, by Sale and Di-'ſtreſs of his Goods; and for Want of Di-'ſtreſs to be committed to the Houſe of 'Correction for any Time not exceeding 'one Month, nor leſs than fourteen Days, 'there to be whipt and kept at hard La-'bour; and the Juſtice ſhall cauſe ſuch 'Hays and Nets to be ſeiſed, and imme-'diately to be deſtroyed in his Preſence.'

But the ſaid Act being found by Experience to be ineffectual, by Reaſon that the Wild-Fowl have not done moulting by the firſt of *September*, ſo that great Numbers were yearly deſtroyed, contrary to the Meaning of the ſaid Act; therefore,

By **Stat.** 10 *Geo.* 2. 'If any Perſon 'ſhall in any Year between 1 *July* and 'I *October*, by Hays, *&c.* or other Nets, 'drive and take any *Wild-Duck*, Teal, Wid-'geon, or any other Water-Fowl in any 'Marſhes, Fens, or other Places of Reſort 'for Wild-Fowl, and ſhall be thereof con-'victed in ſuch Manner as in the ſaid Act '9 *Annæ* is preſcribed, ſhall be liable to

'the same Penalties and Punishment as by 'the said Act is directed.'

Winter-Heyning, A Season which is excepted from the Liberty of Commoning in the Forest of *Dean*.

Wood. By **Stat.** 1 *Ed.* 3. *c.* 2. 'Every 'Man having * *Woods* in the Forest might 'take House-bote and Hay-bote in his *Woods*, '(which he had in the old Forests) without 'being attached for the same by the Officers 'of the Forest, so that it be done by the '*View of the Foresters.*'

By **Stat.** 22 *Ed.* 4. *c.* 7. 'Where a Man 'hath *Woods* in his own Ground within the 'old Forests, and shall cut them down by 'the King's Licence, where the *Forest*, *Pur-* '*lieu* or *Chase* belongs to the King, or with- 'out Licence where they belong to the Sub- 'ject, he may inclose the Soil for seven 'Years next after such cutting down.'

Law Cases.

A Seisure being made of the Lord *Lovelace's Wood*, for a Fine of 13 *s.* 4 *d.* the same

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* 'Tis necessary, that there should be *Woods* in every Forest, as well to shelter as at some Times to feed the Deer, and where the Trees grow scattering and at such a Distance that they do not touch one another; such Places are properly called *Woods*. See *Covert*.

ſame was ſtaid at the Juſtice-Seat; but his Claim of a Privilege to fell *Wood* in the Foreſt, without Licence or View of the Foreſters, was not allowed; though in 4 *Inſt.* 298. a *Preſcription* to fell and ſell *Wood* without View was held good; but at a Juſtice-Seat held for the Foreſt of *Windſor*, that was held to be no Law. *W. Jones* 270.

For in *Whitlock*'s Caſe it was held at a Juſtice-Seat, that a Man may fell *Woods* in a Foreſt for the Fire or other neceſſary Boots, by the View of the Foreſters or Verderors, but not to *ſell* without the Writ *ad quod damnum*; and that if a Foreſter takes any Thing for his Viewing, 'tis Extortion. *Whitlock*'s Caſe, *W. Jones* 268, 277.

It was agreed at the ſaid Juſtice-Seat, that the Chief Warden of the Foreſt could not grant a Licence to fell *Trees* there; nor the Chief Juſtice in Eyre, unleſs 'tis granted *ſedente Curia*, or after a Writ *ad quod damnum*. *W. Jones* 277.

The Defendant was preſented for felling *Timber-Trees* in *Windſor Foreſt*; and thereupon he at the Juſtice-Seat produced the King's Warrant in theſe Words, (*viz.*) *Whereas* Bagſhot *Rails are in Decay, therefore he* (the Defendant) *ſhould cauſe as much Timber to be felled, as would be convenient for the Repairs thereof*; and this was held to be no good Warrant, becauſe the Decay of the Rails ought firſt to be *viewed*, and an Eſtimate

mate to be made thereof; and then such a Warrant might be granted, but not before. Sir *Charles Howard*'s Case, *W. Jones.*

At the same Justice-Seat it was held, that a *Presentment* made by all the Officers of the Forest, that *Wood* and *Timber* was felled there, and by whom, is sufficient Evidence to convict the Offender. *W. Jones* 268.

The Inhabitants of *Egham*, and of all the Towns in *Surrey* within *Windsor Forest* joined in a Claim to cut down their *Coppices* at Pleasure; and *Noy* the Attorney General insisted at a Justice-Seat, that since the Charter of the Forest was made, a *Prescription* to cut down *Wood* there, is not good; for by that Charter it was granted, that all Freeholders should have their *Woods* in Forests, as they had them at the Time of the *Coronation of H.* 1. which was above 120 Years before that Charter was granted; nay, a Prescription to cut down *Wood* by the View of the Foresters and Verderors is not good, for it must be *per Visum & allocationem, &c.* because if 'tis *per Visum* only, then if a Forester or Verderor is required to view it, and he refuseth, it may be cut down without View. *W. Jones* 275.

An *Under-keeper* being presented at the said Justice-Seat for cutting *unlawful Brouse-Wood*, said in his Defence, that he cut it by the *King's Order to sell*, and with the Money to buy *Hay* for the Deer in hard Weather; the

the Attorney General said, that the King's Commands ought to be obeyed; but that there is a legal Way to put them in Execution. *Rowland Rapley*'s Case, *W. Jones* 279.

So where one was presented for *felling and carrying away seven Timber-Trees*; he insisted at a Justice-Seat, that those *Trees* were cut down to repair a *Bridge* which the King ought to repair, and that they were imployed accordingly, and that the Lops were sold to pay the Workmen with the Money arising by such Sale; and though the Verderors affirmed, that the *Timber* was imployed as aforesaid, yet he was fined 5*s.* for his undue Taking the *Trees*. *Clifton*'s Case, *W. Jones* 279.

Though a Man may cut down his own *Woods* in a Forest for necessary Boots, without View of the Foresters or Verderors; yet some Officer of the Forest ought to present it at the next *Court of Attachment*, and how much was felled, and that they had seen it, that it may appear on Record what Quantity was cut down. *W. Jones* 295. See the *Table*.

Wood-cock, Is a Fowl of Warren. 1 *Inst.* 233. *a.*

Wood-Geld, Is taken to be the Gathering or Cutting of Wood within the Forest; or it signifies to be free from Payment of Money for taking Wood in any Forest. *Cromp. Jurisd.* 157. *Co. Lit.* 233.

Wood-mote, Is the old Name of that Court of the Foreſt, now called the *Court of Attachments.*

Wood-Plea-Court, A Court held twice a Year in the Foreſt of *Clun* in *Shropſhire*, for determining all Matters of Wood and Agiſtments. *Jac. Law Dict.* ſub Tit.

Woodward, Is an Officer of the Foreſt whoſe Charge is to look after the Woods and Vert there; his very Name denotes his Office; he muſt preſent all Offences within his Charge at the Court of *Attachments* or *Swainmote*, to the Chief Foreſters or Verderors; and if he ſee or know any Malefactors; or if he ſhall find any Deer killed or hurt, he muſt acquaint a Verderor therewith, and preſent the ſame at the next Court of the Foreſt, and in theſe Particulars his Oath doth conſiſt; but he cannot make any Attachments; and by the Law he muſt not walk with Bow and Arrows, but with a Foreſt-Bill or Hatchet. *Manwood* 389, 390, 409.

Sed Q. If he may not attach Malefactors, for it may be impoſſible for him to preſent them to the Chief Foreſter, becauſe they may be gone before he finds the Foreſter. And indeed the 11 *Artic.* of the Aſſiſes of the Foreſt ſeems to clear this, for it is there ſaid, ‘ *Si quis Viderit aliquos Malefactores* ‘ *infra Metas Foreſtæ aliquam feram capere* ‘ *vel aſportare, debet illos capere ſecundum poſſe* ‘ *ſuum,*’

'*ſuum*,' which Words, '*Si quis viderit Ma-*
'*lefactores*, *&c.*' being general, extend (as I apprehend) to Woodwards as well as all other Miniſters of the Foreſt.

The *Woodward* ought to appear at every Juſtice-Seat, and when he is called he muſt preſent his Hatchet to the Lord Chief Juſtice in Eyre.

Where the King hath a Wood in his own Land in a Foreſt, and *leaſeth* the ſame to another, the Leſſee ought to provide a *Woodward*; and if he doth not appear at the Courts of the Foreſt, the Wood ſhall be ſeiſed, and alſo the Office of the *Woodward*; the Law is the ſame where a Subject has a Wood in a Foreſt. *W. Jones* 278.

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